Dec 11 1876

Submitted

3-424

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 931.

HEYMAN OSTERBERG, APPELLANT,

vs.

THE UNION TRUST COMPANY OF NEW YORK ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

FILED NOVEMBER 17, 1876.

Dec 16 1876

Argued

Jas Davis

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1 Pleas in the circuit court of the United States for the northern district of Illinois, held at the United States court-rooms, in the city of Chicago in the district aforesaid, before the judges thereof, on Wednesday, the twenty-fifth day of August, in the year of our Lord one thousand eight hundred and seventy-six, and of our Independence the one hundred and first year.

WILLIAM H. BRADLEY, *Clerk.*

THE UNION TRUST COMPANY OF NEW YORK
vs.
THE ROCKFORD, ROCK ISLAND AND ST. LOUIS Railroad Company et al. } In chancery.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

Be it remembered that on the twenty-fourth day of August, A. D. 1876, came Heyman Osterberg, by Messrs. J. R. Doolittle and Son, his solicitors, and filed in the office of the clerk of the circuit court of the United States, for the northern district of Illinois, at Chicago, in the district aforesaid, his petition in said entitled cause, which said petition is in the words and figures following, to wit:

2 In the circuit court of the United States for the northern district of Illinois, in chancery.

THE UNION TRUST COMPANY OF NEW YORK
vs.
THE ROCKFORD, ROCK ISLAND AND ST. LOUIS Railroad Company and others, defendants.

The petition of Heyman Osterberg, trustee, respectfully shows unto this court, that the above-entitled suit was commenced in this court on the eleventh day of June, A. D. 1874, that such proceedings were had that afterwards, and on the 29th day of October, A. D. 1874, this honorable court made and entered a decretal order, the Hon. Thomas Drummond, judge, presiding, in substance as follows:

"THE UNION TRUST COMPANY OF NEW YORK
"*vs.*
"THE ROCKFORD, ROCK ISLAND AND ST. LOUIS Railroad Company and others. } In chancery.

"And now on this day, the court being sufficiently advised, upon the motion of the complainant for the appointment of a receiver, heretofore submitted to the court upon the bill, exhibits,
3 amended bill, supplemental bill, exhibits thereto, and affidavits, filed both by the said complainants and the said defendant, and the court having heard argument thereon, it is ordered and decreed by the court that William H. Ferry be appointed, upon giving security in the sum of one hundred thousand dollars, receiver herein, to take possession of the money and assets, real and personal, road-bed, road, iron, ties, lands, right of way, mines, rolling-stock, leases, franchises, and all other rights and property whatsoever of the said Rockford, Rock Island and St. Louis Railroad Company, wherever the same may be found, with power to manage, control, and exercise all the franchises whatsoever of said railroad company, and if need be, under

the direction of the court, to sell, transfer, and convey the whole or any part of the property of said railroad company, and with power to prosecute, defend, and continue all suits brought by or against the said railroad company, whether heretofore or hereafter commenced, and whether in the name of said railroad company or otherwise, to defend all suits brought against him as such receiver or affecting his receivership, and to bring such suits in the name of said railroad company as he may be advised by counsel to be necessary and proper in the discharge of the duties of his office, and for acquiring, securing, and protecting the assets, franchises, property, and rights of the said railroad company. And it is further ordered that the said defendant, the Rockford, Rock
4 Island and St. Louis Railroad Company, Cornelius Lynde, Ransom R. Cable, or whoever may have posse-sion thereof, assign, transfer, and deliver over to such receiver on oath, under direction of H. W. Bishop, a master of this court, all the property, real and personal, wheresoever found, and all contracts for the purchase of land and all other equitable interests, things in action, and other effects which belonged to or were held in trust for said defendant railroad company, or in which it had any beneficial interest, in the same condition they were at the time of exhibiting the said bill of complaint in this cause, except so far as necessarily changed in the proper management of said road, or in which it now has any such interest, and that said defendant deliver over in like manner all books, vouchers, and other evidences relating thereto.

"And it is further ordered that the said receiver have full power and authority to inquire after, receive, and take possession of all such property, debts, equitable interests, things in action, and other effects, and for that purpose to examine said defendants, its officers, and such other persons as he may deem proper, on oath before the said master from time to time as he may deem necessary.

"And it is further ordered that the said William H. Ferry is hereby directed and required, as such receiver, to keep a full and accurate account of all his acts and doings as such receiver, and to report the same to this court from time to time as he may hereafter be directed by the order of this court, and in the mean time, and until another
5 order of this court, to run, operate, and manage the railroad of the said defendant railroad company, and to manage and control all the said property and affairs of said defendant railroad company.

"And the said receiver is hereby empowered and authorized to employ such counsel and attorneys as he may deem necessary to manage in his behalf such suits and other affairs as have or may arise, and to advise such receiver in relation to the performance of his duties therein.

"And it is further ordered, adjudged, and decreed, that said receiver may use the moneys of said defendant railroad company for any and all of the purposes stated in the foregoing provisions."

That such proceedings were also had that under said decretal order the said railroad company duly made, executed, and delivered to the said William H. Ferry, the receiver aforesaid, their deed bearing date November 9th, A. D. 1874, in the words and to the effect as follows:

"This indenture made the ninth day of November, in the year one thousand eight hundred and seventy-four, between the Rockford, Rock Island and St. Louis Railroad Company, party of the first part, and William H. Ferry, a receiver appointed by the United States circuit court for the northern district of Illinois, party of the second part.

"Whereas, in and by an order of said court, made in a certain cause pending therein, wherein the Union Trust Company of New York
6 is complainant, and the Rockford, Rock Island and St. Louis Rail-

road Company, in said original suit, and by amendment and supplemental bill, Ransom R. Cable, Cornelius Lynde, and others are defendants, on the twenty-ninth day of October, in the year one thousand eight hundred and seventy-four, it was ordered that the said party of the second part be appointed, upon giving security in the sum of one hundred thousand dollars, receiver, to take possession of the moneys and assets, real and personal, road-bed, road, iron, ties, lands, right of way, mines, rolling-stock, leases, franchises, and all other rights and property whatsoever of the said Rockford, Rock Island and St. Louis Railroad Company wherever the same might be found, with power to manage, control, and exercise all the franchises whatsoever of the said Rockford, Rock Island and St. Louis Railroad Company, and, if need be, under the direction of the court, to sell, transfer, and convey the whole or any part of the property of said railroad company, and with power to prosecute, defend, and continue all suits brought by or against the said railroad company, whether heretofore or hereafter commenced, and whether in the name of said railroad company or otherwise, to defend all suits brought against him as such receiver or affecting his receivership, and to bring such suits in the name of said railroad company as he may be advised by counsel to be necessary and proper in the discharge of the duties of his office, and for acquiring, securing, and protecting the assets, franchises, property, and rights of the said railroad company.

7 "And it was further ordered that the said Rockford, Rock Island and St. Louis Railroad Company, Cornelius Lynde, Ransom R. Cable, or whoever might have possession thereof, assign, transfer, and deliver over to such receiver on oath, under direction of Henry W. Bishop, a master of said court, all the property, real and personal, wheresoever found, and all contracts for the purchase of land, and all other equitable interests, things in action, and other effects which belonged to or were held in trust for said railroad company, or in which it had any beneficial interest, in the same condition that they were at the time of exhibiting the said bill of complaint in said cause, except so far as necessarily changed in the proper management of said road, or in which it had, at the time of making said order, any such interest, and that the said railroad company deliver over in like manner all books, vouchers, and other evidence relating thereto.

"And it was further ordered that said party of the second party have full power and authority to enquire after, receive and take possession of all such property, debts, equitable interests, things in action and other effects, and, for that purpose, to examine the officers of said railroad company, and such other persons as he might deem proper, on oath, before the said master, from time to time, as he may deem necessary.

"And whereas the said party of the second part has been duly appointed said receiver by said United States circuit court, and has
8 given and filed security, pursuant to the rules and practice of the said court and the provisions of the said order:

"Now this indenture witnesseth, that the said party of the first part, in obedience to the said order, and in consideration of the premises aforesaid, hath assigned, transferred, and delivered over to the said party of the second part, under the direction of the said master, testified by his approval endorsed hereon, all and every the estate, real and personal, chattels real, moneys, outstanding debts, things in action, equitable interests, property and effects whatsoever and wheresoever, of or belonging, or due to, or held in trust for the said railroad company, or in which it had any interest, right, or title, at the time of filing the bill of

complaint in the suit in chancery above referred to, to wit, on the eleventh day of June, in the year one thousand eight hundred and seventy-four, except so far as necessarily changed in the proper management of the affairs of said road since that time; and more especially this instrument is intended to grant and convey all the property, equitable interests, things in action and effects described or enumerated in the schedule hereto annexed; and also all deeds, writings, leases, muniments of title, books of account, papers, vouchers, and other evidences relating or appertaining to the property, equitable interests, things in action and effects, hereby granted and conveyed, or intended so to be: To have and to hold the same unto him, the said party of the second part, as such receiver as aforesaid, and to his successors and as-
9 signs, subject to the present and future order, direction and control of the said court.

"And for the better and more effectually enabling the said party of the second part, his successors and assigns, to recover and receive all or any part of the estate, property, book-debts, things in action and effects hereby granted, conveyed, assigned, and transferred, the said party of the first part has made and appointed, and by these presents does make and appoint, the said party of the second part, his successors and assigns, the attorney and attorneys of it, the said party of the first part, in its name or otherwise, to commence, continue, discontinue, and again bring, perfect, and carry out actions and suits against any corporate company, association, firms, persons or person, for on account of all or any part of the said estate, property, equitable interest, things in action or effects.

"I' witness whereof the said party of the first has caused its corporate seal to be hereto attached, and these presents to be attested by the signature of its president and secretary, the day and year first above written.

"HIRAM CABLE,
President.

[SEAL.] "JOHN P. WHITEHEAD,
Secretary.

10 "STATE OF ILLINOIS,
"*Rock Island County, ss:*

"I, Lucian Adams, a notary public in and for the city of Rock Island, in said county, in the State aforesaid, do hereby certify that this day personally appeared before me Hiram Cable, president of the Rockford, Rock Island and St. Louis Railroad Company, and John P. Whitehead, secretary of said railroad company, who are personally known to *be* to be the identical persons whose names as such president and secretary respectively, for and in behalf of said railroad company, executed the same, and, being by me duly sworn, did depose and say that they are the above-described officers of said railroad company; that they know the corporate seal of said company; that the seal affixed to the foregoing deed of conveyance is the corporate seal of said company; and that they severally subscribed their names to said deed as such officers of said company respectively.

"And the said Hiram Cable and John P. Whitehead severally acknowledge that they executed the said deed of conveyance as such officers of said railroad company, and on behalf of said railroad company, as their voluntary act and deed for the uses and purposes therein expressed.

"In witness whereof I have hereunto set my hand and affixed my notarial seal at Rock Island, this ninth day of November, A. D. 1874.

[SEAL.] "LUCIAN ADAMS,
"*Notary Public.*"

11 That said receiver was duly qualified and entered upon the discharge of his trust, and on or about the 1st day of November, A. D. 1874, entered into full possession of the said railroad, and all its franchises, rights, tolls, rents, issues and profits, and of all the assets, money and property of said railroad company whatsoever, and continued to act as such receiver, until the time hereinafter mentioned.

And your petitioner further shows that on the 13th day of July, A. D. 1875, this cause came on to be heard, the parties appearing by their respective counsel, and a decree was made and entered by this honorable court, the Hon. Thomas Drummond, circuit judge, and the Hon. Henry W. Blodgett, district judge, presiding, as follows, viz:

"THE UNION TRUST COMPANY OF NEW YORK
"*vs.*
"THE ROCKFORD, ROCK ISLAND AND ST. LOUIS Railroad Company, The Orion and Minersville Railroad Company, and Samuel M. Nickerson, and Robert S. Noyes and one hundred and twenty-three other holders of bonds who have intervened herein. } In chancery.

"This cause came on to be further heard at this term, to wit, on the thirteenth day of July, A. D. 1875, and no other exceptions being taken to the said master's report, it is ordered that said report be and
12 the same is in all things affirmed.

"And thereupon this cause coming on for final hearing upon the pleadings, proofs, and admissions of the parties, and having been argued by counsel, upon full consideration thereof it is ordered, adjudged, and decreed as follows, viz:

"First. That said mortgage of June 15, 1868, covers all that portion of the Rockford, Rock Island and St. Louis Railroad, with its appurtenances, which is north of a point on the main line of said railroad due east of the city of Burlington, in the State of Iowa, together with all the real estate of said company north of that point, and the holders of the first series of said bonds, numbered from one to five thousand inclusive, which are secured by said mortgage, are entitled to a first and prior lien for the payment thereof upon all the property covered by said mortgage of June 15, 1868, and if the proceeds of said property at the sale hereinafter decreed to be made are insufficient for the full payment of said first series of bonds, the holders thereof after exhausting such proceeds are entitled, for any balance which may be due upon said bonds, to share pro rata with the holders of the said second series of bonds, numbered from five thousand and one to nine thousand inclusive, in the proceeds of all the other property of said railroad company covered by said mortgage of October 23, 1868, and the holders of said second series of bonds are not entitled to any part of the proceeds of the property covered by said mortgage of June 15, 1868, unless such proceeds are more than sufficient to pay the whole of said first series of bonds, in which
13 event the holders of said second series of bonds would have a lien upon such surplus, and the holders of said second series of bonds, numbers 5001 to 9000 inclusive, have not the right or equity which is

claimed by them or on their behalf in this suit to require the respective holders of said first series of bonds, numbers 1 to 5000 inclusive, to elect whether to claim and have the benefit of a lien pro rata with the holders of the said second series of bonds upon the entire property covered by the said mortgage of October 23, 1868, and as a condition thereof to relinquish priority of lien under the said mortgage of June 15, 1868, upon the property covered thereby for the benefit of said first series of bonds until satisfied, to the exclusion of said second series, or in lieu thereof to claim their full legal right and priority of lien under the said mortgage of June 15, 1868, upon the property embraced therein for the exclusive benefit of said first series of bonds until satisfied, and thereupon relinquish the right to claim the benefit of said mortgage of October 23, 1868, until after satisfaction of said second series of bonds; nor have the holders of said second series of bonds any right or equity to put the holders of said first series of bonds to any election in the premises, or to require them, or any of them, to waive any right of preference under said mortgage of June 15, 1868, as a condition of claiming or enjoying the full benefit of the security afforded to them by said mortgage of October 23, 1868. That the property covered by said mortgages is so situated that it would be for the interest of the said railroad company, of the holders of said bonds of both series, and of all par-
14 ties concerned, that it should all be sold together, and not in separate parcels; and that the value of the property covered by the mortgage of June 15, 1868, is thirty-seven per cent. of the value of the entire property covered by both of said mortgages and hereinafter decreed to be sold.

"That the principal sum of both series of bonds in said mortgages mentioned is hereby declared to be due, and the said bonds and coupons which were provisionally reduced and the coupons which were provisionally funded under said contracts of July first and October ninth, 1872, are entitled to stand in full force and effect as if said contracts had not been made, crediting merely on such coupons the cash actually paid on account thereof, except that the holders of said certificates of indebtedness are entitled to be taken and held as the equitable owners of said coupons, in lieu of which they were issued, and the holder of said preferred stock, after the holder of half cancelled bond, on account of which it was issued, shall have received the full amount of his half of his bond and interest not cancelled, is entitled to the distributive share of any residue appertaining to such provisionally half-canceled bond.

"Second. That the said Rockford, Rock Island and St. Louis Railroad Company pay to the said complainant, the Union Trust Company of New York, the trustee in said mortgages mentioned, within five days from this date, the sum of eleven million two hundred and fifty-one thousand five hundred and thirty-five dollars and ninety cents ($11,251,-
535.90) in gold, with interest thereon from the twenty-fourth day
15 of May, 1875, and the costs of this suit, the said sum being the amount, principal and interest, found by said master's report to be due and unpaid upon the bonds of said railroad company secured by said mortgages, of which sum six million two hundred and fifty-four thousand two hundred and nineteen dollars and twenty-eight cents ($6,254,219.28) was due on the first series of bonds, numbered from 1 to 5000 inclusive, and the balance, four million nine hundred and ninety-seven thousand three hundred and sixteen dollars and sixty-two cents ($4,997,316.62) in the second series of bonds numbered from 5001 to 9000 inclusive.

"Third. That in default of such payment the mortgaged premises in

said bill of complaint mentioned, including the entire railroad of said Rockford, Rock Island & St. Louis Railroad Company, with all branches and tracks to the coal-mines owned or leased by it; and also including all the railroads, rights of way, depot-grounds, coal-lands, or other lands, all depots, station-houses, engine-houses, car-houses, freight-houses, grain-houses, grain-elevators, wood-houses, coal-houses, or other buildings, and all car-shops and machine-shops; also all kinds of rolling-stock or equipments, machinery, and tools held for use in connection with said Rockford, Rock Island and St. Louis Railroad Company or its coal-lands and coal-mines, including all locomotives, cars, tenders, or other rolling-stock and equipments, and all implements, fuel, and materials for the construction, operating, repairing, or replacing the said railroad or any of its
16 branches, or in or for operating and working any of its coal-mines or any of its equipments; also all franchises connected with or relating to the said railroad, and also all rights, claims, and benefits in and to all leases, contracts, and agreements made with any parties owning any coal-lands or mineral-lands, or railroad or railroads, or with any other parties for any other property, together with all and singular the tenements and appurtenances thereunto belonging, and the reversions, remainders, tolls, incomes, rents, issues, and profits thereof; and also all the estates, rights, titles, and interests whatsoever, as well at law as in equity, of the said Rockford, Rock Island and St. Louis Railroad Company of, in, and to the same; also the entire railroad of the Orion and Minersville Railroad Company, with all the franchises, privileges, and appurtenances thereto belonging, and all other property real and personal belonging to said Rockford, Rock Island and St. Louis Railroad Company and Orion and Minersville Railroad Company, or either of them, and which is now in the possession of said receiver, and hereinafter described or referred to, and all other property, rights, franchises, and things which shall have been acquired by purchase or otherwise by the said receiver during the pendency of this suit for use in connection with said railroads, and shall be at the time of the sale hereby decreed in his possession or to which he may then be entitled, be sold by Henry W. Bishop, the master in chancery of this court, together as one property and not in separate parcels, and in the manner hereinafter directed, in order to satisfy and pay the amount due on said mortgages, the
17 costs of this proceeding, and the said several sums hereinafter decreed to be paid; that any sale hereunder shall be at public auction to the highest bidder; two hundred thousand dollars of the sum bid to be paid in cash at the time of sale, and the balance as hereinafter provided when said sale (to be made in Chicago, in the State of Illinois, at such time as said master shall appoint) shall be confirmed by the court; that notice of such sale shall be given by said master by advertisement thereof daily, six times in each week for three successive weeks preceding the day of sale, in one daily newspaper of general circulation in each of the cities of Chicago and New York; that after the payment to the master of said sum of two hundred thousand dollars of the sum bid by the purchaser at said sale, the master may receive from such purchaser for the balance of the sum bid at such sale, in lieu of cash, any of the outstanding and unpaid bonds or coupons issued under and secured by said mortgages of June 15, 1868, or October 23, 1868, or certificates of indebtedness issued in lieu of any of said coupons at such percentage as the court shall direct at the approval of said sale.

"Fourth. That out of the purchase-money received by the master from such sale, he shall first pay the costs of this suit, including those of all the parties thereto, to be taxed, together with the costs and ex-

penses of executing this decree, and to the said Union Trust Company of New York the trustee in said mortgages, as a just allowance for its reasonable expenses, and compensation and counsel-fees, the sum of forty-two thousand five hundred and six dollars and ninety-five cents, ($42,506.95,) as specified in said master's report, and to the at-
18 torneys of said intervening bondholders the sum of eight thousand four hundred dollars, ($8,400,) as specified in said master's report, and to the Orion and Minersville Railroad Company, from the proceeds of sale to which the holders of the first series of bonds are herein decreed to have a first and prior right or lien, the sum of twenty-nine thousand three hundred and sixty-two dollars and twenty cents, with ten per cent. per annum interest from the 15th day of June, 1875, the said sum being the balance unpaid to the said Orion and Minersville Railroad Company, and agreed to be accepted by it in discharge of all sums due or hereafter to become due under its contract with the said Rockford, Rock Island and St. Louis Railroad Company, and a previous decree of this court, and upon the payment of the said sum of twenty-nine thousand three hundred and sixty-two dollars and twenty cents, ($29,362.20,) with interest as aforesaid, to the said Orion and Minersville Railroad Company, it shall, by a good and sufficient deed, convey to the purchaser at such sale its entire line of road, with the privileges and appurtenances thereunto belonging, including its franchises and property of every description, real and personal, exclusive of the money hereinbefore directed to be paid to the said railroad company. And the master shall reserve in his hands such further sum as the court may, at or before the confirmation of the sale, direct, subject to its further order, as may be necessary for the protection of persons who have filed petitions claiming any interest in some part of the property held at this time by the receiver, if any such shall be found to exist.

"Fifth. That the master shall pay over the balance of the
19 proceeds of said sale to the clerk of this court, who shall apply the same under the direction of the court to the payment of the bonds, coupons, and certificates of indebtedness issued, in lieu of coupons, secured by said mortgages respectively, and which shall then be outstanding and unpaid, paying the same in full, if the said balance be sufficient for that purpose; and if not, he shall first set apart thirty-seven per cent. of the said balance, less the sum of forty-eight thousand one hundred and seventy-five dollars and seventy-six cents, ($48,175.76,) being sixty-three per cent. of the amount heretofore paid and the entire amount hereinbefore directed to be paid to the Orion and Minersville Railroad Company for the payment of the first series of bonds, numbered from 1 to 5,000 inclusive, and the coupons and the certificates of indebtedness issued in lieu of any of said coupons thereto belonging; and from the sum so set apart the clerk shall reserve the sum of twenty-nine thousand three hundred and forty four dollars and twenty-eight cents ($29,344.28) in gold coin, or its equivalent in United States currency, on the day of sale, for payment as follows—that is to say, to the holders of coupons numbered six, (6,) seven, (7,) eight, (8,) nine, (9,) and ten, (10,) belonging to said first series of bonds, who did not become parties to said provisional contract of July 1 and October 9, 1872, and who have not already been paid such sum, an amount which shall make the sum paid on said coupons equal to the sum the holders thereof would respectively have been entitled to receive had they been parties to said contract, to wit, the sum of seventeen dollars and fifty cents on each coupon No. 9; seventeen dollars

20 and fifty cents on each coupon No. 10; one dollar and forty cents on each unscaled coupon Nos. 6, 7, 8; and by paying to the holders of half-cancelled coupons of certificates of indebtedness issued in lieu of coupons under said provisional contract belonging to said first series of bonds who have not already received the sum to which they were entitled under said contract between August 1, 1872, and up to and including August 1, 1873, any balance that may be due them respectively under said contract, the above-mentioned sum of twenty-nine thousand three hundred and forty-four dollars and twenty-eight cents ($29,344.28) being distributable amongst the said respective classes of coupon-holders of the first series of bonds in the respective sums following, as shown by the said master's report—that is to say:

"Four per cent. on unscaled coupons 6, 7, and 8, being equivalent of interest paid on debt-certificates issued for corresponding coupons on scaled bonds.....	$3,356 08
"One year's interest at 4 per cent. on debt-certificates issued for coupons 6, 7, and 8 on scaled bonds, such interest not having been called for.....	1,698 20
"Scaled coupons No. 9 not presented for payment.....	227 50
"Scaled coupons No. 10 not presented for payment.....	927 50
"Coupons No. 9 on unscaled bonds, $17.50 each.....	11,567 50
"Coupons No. 10 on scaled bonds, $17.50 each	11,567 50
	29,344 28

21 "And it is hereby declared and alleged that the holders of the above-mentioned coupons are entitled to receive payment out of the proceeds of said sale of the above-mentioned sums, amounting in the aggregate to twenty-nine thousand three hundred and forty-four dollars and twenty-eight cents in gold coin, or its equivalent as aforesaid, in preference to and priority over the holders of the other bonds and coupons secured by the mortgagees aforesaid; and he shall then apply the remainder of said thirty-seven per cent. so set apart to the payment of said first series of bonds, numbered from 1 to 5000 inclusive, and the coupons belonging to the same, or the certificates of indebtedness issued in lieu of any of said coupons, pro rata, and in proportion to the amounts due and unpaid on them respectively, and from the balance then remaining in his hands the clerk shall reserve the sum of fifteen thousand nine hundred and sixty-one dollars and sixty-two cents, ($15,961.62,) cash in gold coin, or its equivalent in United States currency, on the day of sale, for payment as follows—that is to say, to the holders of coupons numbered 6, 7, 8, 9, and 10, belonging to said second series of bonds numbered from 5001 to 9000 inclusive, or to representative bonds of smaller denomination, issued in lieu of any of said bonds, who did not become parties to said provisional contract of July 1 and October 9, 1872, and who have not already been paid such sum, an amount which shall make the sum paid on said coupon equal to the sum the holders thereof would respectively have been entitled to receive had they been parties to said contract, to wit, the sum of seventeen dollars and fifty cents ($17.50) on each coupon No. 9; the sum of seventeen dollars and fifty cents on each coupon No. 10, and one dollar and forty cents ($1.40) on each unscaled coupon Nos. 6, 7, and 8,

22 belonging to each $1,000 bond, and a pro rata amount in coupons belonging to representative bonds of smaller denomination than $1,000, and by paying to the holders of half-cancelled coupons be-

longing to said second series of bonds, or certificates of indebtedness, issued in lieu of said coupons under said provisional contract, who have not already received the sum to which they were entitled under said contract between August 1st, 1872, up to and including August 1st, 1873, any balance that may be due them respectively under said contract, the above-mentioned sum of fifteen thousand nine hundred and sixty-one dollars and sixty-two cents ($15.961.62) gold being distributed amongst the said respective classes of coupon holders of the second series of bonds, in the respective sums following, as shown by the said master's report—that is to say:

"Four per cent. on unscaled coupons 6, 7, and 8, being equivalent of interest paid on debt-certificates issued for coupons on scaled bonds.....	$2,067 52
"One year's interest at 4 per cent. on debt-certificates paid for coupons 6, 7, and 8, on scaled bonds, such interest not having been called for.....	1,530 35
"Scaled coupons No. 9, not presented for payment.....	364 00
"Scaled coupons No. 10, not presented for payment.....	1,020 25
"Coupons No. 9, on unscaled bonds, $17.50 each.....	5,489 75
"Coupons No. 10, on unscaled bonds, $17.50 each.....	5,489 75
	$15,961 62

23 'And it is hereby declared and adjudged that the holders of the above-mentioned coupons are entitled to receive payment out of the proceeds of said sale of the above-mentioned sums, amounting in the aggregate to fifteen thousand nine hundred and sixty-one dollars and sixty-two cents ($15,961.62) in gold coin or its equivalent, as aforesaid, in preference to and priority over the holders of the other bonds and coupons secured by the mortgages aforesaid; and he shall then apply the balance remaining to the payment, pro rata, of the amount remaining due and upon all of said bonds of both series and the coupons belonging to the same, and the certificates of indebtedness issued in lieu of any of said coupons, in proportion to the said amounts remaining due and unpaid thereon respectively, making said payments on representative bonds and coupons of smaller denominations whenever issued in lieu of any of said original bonds, and reckoning said bonds of the first series, Nos. 1 to 5000 inclusive, for the purpose of such pro rata payment and distribution, at the amount remaining due thereon, after crediting the amount received or receivable thereon under the foregoing provision hereof, for their pro rata shares of the net proceeds, calculated as aforesaid, of the property covered by said mortgage of June 15, 1868, upon the presentation and surrender of the said bonds and coupons and certificates of indebtedness respectively, and shall mark on each bond, coupon, and certificate of indebtedness so surrendered the amount paid thereon, and deposit the same in his office.

24 "Sixth. And the said clerk is hereby ordered and directed, on receipt of any money from the master, as aforesaid, for distribution, to give notice to the holders of bonds, coupons, and certificates of indebtedness, entitled to share in the distribution thereof, to present their bonds, coupons, and certificates of indebtedness for payment of the amounts to be paid thereon by said clerk at some place to be designated in said notice, by publication in a newspaper published in each of the cities of New York and Frankfort-on-the-Main, Germany.

"Seventh. That William H. Ferry, the receiver herein, shall account for and pay over to the said master, and that he be and he is hereby

authorized to receive from him, the net earnings and income of said railroad from this date up to the day of sale and until any purchaser at said sale shall take possession, and any amount so accounted for and paid over to said master shall be added to the proceeds of sale, and applied in the same manner as hereinbefore directed.

"Eighth. That, upon the completion and confirmation by the court of any sale made under and in pursuance of this decree, the said master shall make, execute, and deliver to the purchaser or purchasers thereat a good and sufficient deed or deeds, conveying to him or them the property, rights, privileges, and franchises so sold to and purchased by him or them, which said deed or deeds shall be valid and effectual to convey to and vest in said purchaser or purchasers all the right, title, interest, claim, and demand whatever, in law or equity, which the said Rockford, Rock Island, and St. Louis Railroad Company had at the time of
25 the execution and delivery of said mortgages, or has since acquired, or which was transferred or conveyed by said mortgages, or either of them, of, in, or to the said property, rights, privileges, or franchises so sold and conveyed by said master.

"That the sale so made shall be absolute, and not subject to any redemption, nor shall there be any necessity for an appraisement of the premises to be sold. And from and after such sale and the conveyance thereupon executed, the said Rockford, Rock Island and St. Louis Railroad Company, and all and every person claiming by, through, or under it subsequently to the filing of the original bill of complaint herein, be and they are hereby forever barred and foreclosed of and from all and every interest, estate, right, claim, or equity of redemption of, in, or to said property, rights, privileges, or franchises so sold, and every part and parcel thereof. That upon confirmation of such sale and conveyance by said master, the receiver shall surrender the possession of said railroad, together with all depots, station-ground, rolling-stock, materials, and other property of every kind and description appurtenant or belonging thereto, sold under this decree to the purchaser or purchasers thereof.

"Ninth. And it is further ordered that the master make report to this court of his actings and doings in the premises with all convenient speed after said sale shall have taken place.

"Tenth. And it is further ordered, adjudged, and decreed, that for any portion of the said sums found due on the bonds secured by said mortgages, which shall remain due and unpaid after sale of the
26 said mortgaged property, under and by virtue of this decree, in consequence of the insufficiency of said proceeds of sale to pay the same, the said complainant, as trustee, shall have judgment against said Rockford, Rock Island and St. Louis Railroad Company, and be entitled to have a writ or writs of execution against all the property of said company to collect the same, as provided by the rules and practice of this court. And all questions arising in this cause not herein or heretofore adjudicated by the court are reserved for future consideration.

"The property hereinbefore directed to be sold which has been reduced to, and is now in the actual possession of, the receiver consists of the following:

"A road from Rock Island Junction to Port Byron Junction, thirty-nine and four-tenths miles, (39.4.)

"At Rock Island, five-twelfths ($\frac{5}{12}$) miles.

"From Colona to Minersville, one and four-tenths (1.4) miles.

"From Orion to Monmouth, thirty-eight and three-tenths (38.3) miles.

"Branch road from Rock River Junction to coal mines at Cleveland, three and five-tenths (3.5) miles.

"From Monmouth to Alton Junction, one hundred and sixty-one and six-tenths (161.6) miles.

"A detatched road from Keithsburg to Sagetown, which has no connection with any of the other roads, seventeen and nine-tenths (17.9) miles.

"A joint interest with the Chicago and Northwestern Railway from Rock Island Junction to Sterling, five and two-tenths (5.2) miles.

"A contract with the Chicago and Northwestern Railroad Com-
27 pany for the joint use of said road between said points.

"A right of way from Port Byron Junction to Rock Island.

"From Orion to Minersville, a distance of seven and six-tenths (7.6) miles, the company owns right of way, track, and appurtenances, (subject to a decree entered in this cause in favor of the Orion and Minersville Railroad.)

"A contract with the Indianapolis and St. Louis Railroad Company, for the use of its road from Alton Junction to East St. Louis, twenty-one miles, and certain depot privileges and facilities at East St. Louis.

"A contract with the Chicago and Rock Island Railroad for the use of its track between Colona and Port Byron Junction, and from Port Byron Junction to Rock Island, side-tracks, twenty-one and five-tenths (21.5) miles.

"All the depots along the line of the Rockford, Rock Island and St. Louis Railroad, excepting at Sterling, Rock Island Junction, Port Byron Junction, Colona, Alexandria, Monmouth, Bushnell, Alton Junction, and the freight depot at Chapin.

"Car-shop, blacksmith-shop, machine shop, and round-house at Beardstown, together with the tools and machinery in said shops.

"An engine-house at Rock Island Junction, Sagetown, and Keithsburg.

"Sundry supplies on hand, averaging fifteen thousand dollars' worth.

"The following rolling-stock:

28 "Fourteen (14) first and second class coaches and sleepers.

"Fifteen (15) way-cars.

"Six (6) baggage and mail cars.

"Three hundred and ninety-one (391) freight-cars.

"Ninety-nine (99) stock-cars.

"Ninety (90) flat-cars.

"Three hundred and seventeen (317) coal-cars.

"Thirty (30) locomotives.

"The following real estate in Henry County, Illinois:

"Lots one, (1,) two, (2,) three, (3,) and five, (5,) in block number ten, (10,) Cleveland, with four small frame buildings, cut in two by side-track to coal mine. Grantor's title based on tax-deed.

"In Green County, Illinois:

"The northeast quarter ($\frac{1}{4}$) of the northeast quarter ($\frac{1}{4}$) of section thirty-six, (36,) town. ten, (10,) of range ten, (10,) west of the third (3d) principal meridian.

"In Schuyler County, Illinois:

"The southeast quarter ($\frac{1}{4}$) of section nineteen, (19,) town. one (1) north, of range one (1) east of the fourth (4th) principal meridian, containing one hundred and sixty (160) acres.

"The fractional southwest quarter ($\frac{1}{4}$) of section twenty, (20,) town. one (1) north, of range one (1) east of the fourth (4th) principal meridian, containing sixty-five and twenty-one one-hundredths (65.21) acres.

"All of fractional section twenty-nine, (29,) in town. one (1) north, of

range one (1) east of the fourth principal meridian, containing twenty eight and seventy-seven one-hundredths (28.77) acres.

29 "In Cass County, Illinois:

"Sand pit, being in the south half (½) of the southeast quarter (¼) of section thirty-five, (35,) town eighteen, (18,) range twelve, (12,) west of the third (3d) principal meridian, containing ten and eighteen one hundredths (10 $\frac{18}{100}$) acres.

"In Scott County, Illinois:

"Sand-pit, about one mile from railroad, being in the northwest quarter (¼) of the northwest quarter (¼) of section one, (1,) town thirteen, (13,) range thirteen, (13,) west of the third (3d) principal meridian, containing ten (10) acres.

"Also the following real estate, situate and lying in Henry County, Illinois, held in trust by Henry Curtis, jr.:

"PADDLEFORD FARM.—The east one-half (½) of the northeast quarter (¼) of section four, (4,) township seventeen (17) north, range two (2) east of the fourth (4th) principal meridian, containing eighty (80) acres. The east one-half (½) of the southeast quarter (¼) of section four, (4,) township seventeen (17) north, range two (2) east of the fourth (4th) principal meridian, containing eighty (80) acres. The west one half (½) of the northwest quarter (¼) of section three, (3,) in township seventeen (17) north, of range two (2) east of the fourth (4th) principa meridian containing eighty acres.

"SHEPPARD FARM.—The southwest quarter (¼) of section thirteen (13,) township seventeen (17) north, of range one (1) east of the

30 fourth (4th) principal meridian, containing one hundred and sixty (160) acres. The south one-half (½) of the southeast quarter (¼) of section fourteen, (14,) township seventeen (17) north, of range one (1) east of the fourth (4th) principal meridian, containing eighty (80) acres. The south one-half (½) of the south one-half (½) of the east one-half (½) of the northeast quarter (¼) of section fourteen, (14,) township seventeen (17) north, of range one (1) east of the fourth (4th) principal meridian, containing twenty (20) acres. All in Henry County, Illinois.

"In Macoupin County, Illinois:

"The west one-half (½) of the west one-half (½) of the northeast quarter (¼) of section thirty-one, (31,) township ten (10) north, of range nine (9) west of the third (3d) principal meridian, containing forty (40) acres.

"The northwest quarter (¼) of the northwest quarter (¼) of section thirty-one, (31,) township ten (10) north, of range nine (9) west of the third (3d) principal meridian, containing forty (40) acres.

"The northeast quarter (¼) of the northwest quarter (¼) of section thirty-one, (31,) township (10) north, of range nine (9) west of the third (3d) principal meridian, containing forty (40) acres.

"The southeast quarter (¼) of the northwest quarter (¼) of section thirty-one, (31,) township ten (10) north, of range nine (9) west of the third (3d) principal meridian, containing forty (40) acres, making a total in Macoupin County of one hundred and sixty (160) acres.

"Lot number six, (6,) in block number three, (3,) in Moore's addition to the town of Brighton.

31 "In Rock Island County, Illinois, that part of lot five (5) lying south of the railroad in block number two, (2,) in Spencer and Case's addition to Rock Island.

"The north one hundred and twenty (120) feet of lots numbers three (3) and four (4) in block number three (3) in Wood's second addition to Moline.

"The north one hundred and twenty (120) feet of lot number seven (7) in block number nineteen (19) in the old town of Moline.

"Fractional part of lots numbers two (2) and three (3) in block number fifteen (15) in the old town of Moline, lying between the Rockford, Rock Island and St. Louis Railroad and the Chicago, Rock Island and Pacific Railroad.

"The court reserves to itself the right, after the sale and the filing of the master's report, to make any modification of the order of distribution named herein which, upon proper application to it, may seem just and equitable."

And your petitioner further shows that pursuant to said last-mentioned decree, and having in all things complied with the requirements thereof, the said Henry W. Bishop, as such master, offered for sale to the highest bidder, at Chicago, pursuant to the notice required, all of the said property and franchises set out and described in said trust-deeds or mortgages, and in said decree, in one parcel, on the 16 day of August, A. D. 1875.

That your petitioner then and there became the purchaser of the
32 same and of all thereof as the highest and best bidder therefor.

That the said master, when offering the same for sale, publicly declared, "I am ordered by the court to say that from the proceeds of sale will be retained a sum sufficient to provide for the taxes of 1873 and 1874." Nothing being said by him in regard to the taxes of 1875.

That the said master then & there read the following advertisement, viz:

"*Master's sale under decree of foreclosure in the matter of the Rockford, Rock Island and St. Louis Railroad Company.*

"UNITED STATES OF AMERICA:

"Circuit court of the United States for the northern district of Illinois, in chancery.

"THE UNION TRUST COMPANY OF NEW YORK, complainant,
vs.
"THE ROCKFORD, ROCK ISLAND AND ST. LOUIS Railroad Company; the Orion and Minersville Railroad Company, and Samuel M. Nickerson, defendants, and Robert S. Noyes, and 123 other holders of bonds who have intervened herein.

"In pursuance of a decree of the said court entered in the above-entitled cause on the 13th day of July, A. D. 1875, I, Henry W. Bishop, master in chancery of said court, will sell together as one property, and not in separate parcels, at public auction, to the highest and best bidder therefor, on Tuesday, the tenth (10) day of August, A. D. 1875, (eighteen hundred and seventy-five,) at ten (10) o'clock in the forenoon of said last-mentioned day, at the front door of the Republic Life Building, No. 157 to 163 La Salle st., in the city of Chicago, county of Cook, and State of Illinois, and as directed in said decree,
33 the mortgaged premises described in the bill of complaint filed in said cause, including the entire railroad of said Rockford, Rock Island and St. Louis Railroad Company, with all branches and tracks to the coal-mines owned or leased by it, and also including all the railroads, rights of way, depot-grounds, coal-lands or other lands, all depots,

station-houses, engine-houses, car-houses, freight-houses, grain-houses, grain elevators, wood-houses, coal-houses, or other buildings, and all car-shops and machine-shops. Also, all kinds of rolling-stock or equipments, machinery, and tools held for use in connection with said Rockford, Rock Island and St. Louis Railroad Company, or its coal-lands and coal-mines, including all locomotives, cars, tenders, or other rolling-stock and equipments; and all implements, fuel, and materials for the construction, operating, repairing, or replacing the said railroad, or any of its branches, or in or for operating and working any of its coal-mines, or any of its equipments; also all franchises connected with or relating to the said railroad, and also all rights, claims, and benefits in and to all leases, contracts, and agreements made with any parties owning any coal-lands or mineral-lands, or railroad or railroads, or with any other parties for any other property, together with all and singular the lands, tenements, and appurtenances thereunto belonging, and the reversions, remainders, tolls, incomes, rents, issues, and profits thereof; and also all the estates, rights, titles, and interests whatsoever, as well at law as in equity, of the said Rockford, Rock Island and St. Louis Railroad Company of, in, and to the same; also, the entire railroad of the Orion
34 and Minersville Railroad Company, with all the franchises, privileges, and appurtenances thereto belonging, and all other property, real and personal, belonging to said Rockford, Rock Island and St. Louis Railroad Company and said Orion and Minersville Railroad Company, or either of them, and which is now in the possession of William H. Ferry, receiver, and all other property, rights, franchises, and things which shall have been acquired by purchase or otherwise by the said receiver during the pendency of this suit, for use in connection with said railroads, and shall be at the time of the sale thereby decreed in his possession, or to which he may then be entitled, together as one property, and not in separate parcels. By the terms of said decree, two hundred thousand dollars of the sum bid at such sale is to be paid by the purchaser in cash at the time of sale, and for the balance of the sum bid by the purchaser at said sale, the master is authorized to receive from such purchaser, in lieu of cash, any of the outstanding and unpaid bonds or coupons issued under and secured by the mortgages of June 15, 1868, or October 23, 1868, mentioned in said decree, or certificates of indebtedness issued in lieu of any of said coupons, at such percentage as said court shall direct at the approval of said sale.

"For a more particular description of the said property, reference can be had to said decree.

"Dated July 19, A. D. 1875.

"HENRY W. BISHOP,
"*Master in Chancery of the Circuit Court of the United States*
"*for the Northern District of Illinois.*"

35 And the said master said nothing further by way of specifying or describing the property than he did by reading such advertisement; that your petitioner then and there bid the sum of one million three hundred and twenty thousand dollars, that being the highest and best bid offered, and thereupon the whole of said premises, franchises, and property embraced in said trust-deeds or mortgages and in said decree of sale was then and there struck off to your petitioner; that your petitioner made all the payments required by said decree, of all which the said master duly made his report to this honorable court, which now remains on file with the clerk thereof; that on the 3rd day of November, A. D. 1875, this honorable court, the honorable Thomas Drummond,

judge, presiding, made and entered another decretal order to let your petitioner into possession of said railroad, which order is as follows, viz:

"THE UNION TRUST COMPANY OF NEW YORK
"*vs.*
"THE ROCKFORD, ROCK ISLAND AND ST. LOUIS
"Railroad Company et als. } In chancery.

"No exceptions having been filed to the master's report of the sale of the mortgaged property and premises mentioned in the bill of complaint, on application of the purchaser, Heyman Osterberg, to be put in possession of the property and premises sold by the master, it is ordered that, upon the payment of three hundred and fifty thousand dol-
36 lars by said Osterberg to the master, Henry W. Bishop, on account of his said bid (in addition to the two hundred thousand dollars already paid) and the sum of four million two hundred thousand dollars of the bonds and coupons issued under and secured by the mortgages of June fifteenth, A. D. 1868, and of October twenty-third, A. D. 1868, or certificates of indebtedness issued in lieu of said coupons, William H. Ferry, the receiver herein, on or before the eighth day of November, instant, surrender the possession of the Rockford, Rock Island and St. Louis Railroad, together with all the property appurtenant thereto of every kind and description which may have come into his hands as such receiver, (not including the money in his possession,) and now held by him, the said property to be retained by said Osterberg until the absolute confirmation of the sale, as hereinafter stated, subject to the control and direction of the court, and the said Osterberg to make no sale, encumbrance, or disposition of any kind of the same or of any part thereof without the order of the court, the said Osterberg to receive the earnings and income and pay the operating and other expenses thereof after the first day of November, A. D. 1875, until the further order of the court.

"And in case of the payment by the said Osterberg of the remainder of his bid for the said premises to the said master in chancery, and of such other sum expended by the receiver as the said purchaser shall be adjudged liable to pay, on or before the fifteenth day of December, A. D. 1875, the sale of the same shall in all things stand confirmed,
37 and the said Osterberg may apply to the said master, under the direction of the court, for a sufficient deed conveying to the said Osterberg all the property sold by the said master to him.

"It is further ordered that William H. Perry, the receiver herein, from the funds in his hands, pay off and discharge all claims by him incurred for operating or other expenses while in possession of said railroad or heretofore by this court authorized by him to be paid, so far as the means in his hands will enable him to pay the same, and if any surplus remains in his hands as receiver after such payments, to pay the same over to the master as directed by the decree heretofore entered in this cause on the thirteenth day of July, A. D. 1875, and that he present his final account of his actings and doings as receiver herein with all reasonable dispatch.

"It is further ordered that out of the purchase-money received by the master, and now in his hands, he proceed to make the payments by him directed to be made by the decree entered in this cause on the thirteenth day of July, A. D. 1875, and in the manner therein specified, and that he receive from the purchaser at said sale, in lieu of cash, on account of the balance of the sum bid at said sale, any of the outstand-

ing and unpaid bonds, coupons, or certificates of indebtedness hereinbefore mentioned, the percentage at which said bonds, coupons, or certificates of indebtedness shall be received to be hereafter determined by the court."

38 And your petitioner further shows that under the said last-mentioned order, and on or about the 9th day of November, A. D. 1875, he was let into the possession of said railroad and franchises, and the receipts and earnings from the first day of November, which fact the receiver reported to this court, and on the 16' day of November, A. D. 1875, the said court, the Hon. Henry W. Blodgett, district judge, presiding, made the following order:

"THE UNION TRUST COMPANY OF NEW YORK
"*vs.*
"ROCKFORD, ROCK ISLAND AND ST. LOUIS Railroad Company et al. } In chancery.

"This day came William H. Ferry, receiver heretofore appointed by this court, and files his report herein, showing his receipts and expenditures as such receiver for the month of October, A. D. 1875, with vouchers for such expenditures, and on motion of said receiver, by his solicitor, it is ordered that said report and vouchers be referred to Henry W. Bishop, master in chancery, who shall examine the same and report as to their correctness.

"And whereas no objection has been filed to the reports of said master upon the reports of said receiver for the months of August and September, A. D. 1875, it is ordered that the reports of said receiver for the said months of August and September, A. D. 1875, and the reports of said master thereon, be affirmed and approved, and that said receiver be allowed the sum of one thousand dollars for each of said months for his compensation as such receiver.

39 "And it further appearing from said report that the said receiver had surrendered the line of the Rockford, Rock Island and St. Louis Railroad, with its equipments and property appurtenant thereto, in accordance with the order of this court entered November first, A. D. 1875, it is ordered that the acts of said receiver in making such surrender be approved, and said receiver be wholly discharged from all care, custody, and control of said railroad, equipment, and property, and from responsibility in relation thereto, unless exceptions thereto be filed within ten days from the entry of this order."

That on the 28th day of January, A. D. 1876, the court, the Hon. Thomas Drummond, judge, presiding, made the further order, as follows, viz:

"THE UNION TRUST COMPANY OF NEW YORK
"*vs.*
"ROCKFORD, ROCK ISLAND AND ST. LOUIS Railroad Company et al. } In chancery.

"And now this cause coming on for further hearing on the master's report that he has received from Heyman Osterberg, the purchaser of the mortgage-property at the sale thereof made on the sixteenth day of August, A. D. eighteen hundred and seventy-five, on account of his said purchase, the sum of six hundred fifty-two thousand five hundred twenty-seven dollars ($652,527) in money and coupons, numbered six, seven, eight, nine, and ten, belonging to said first series of bonds, amounting to twenty

thousand five hundred and thirty-five dollars, ($20,535) and coupons
40 numbered six, seven, eight, nine, and ten, belonging to said second series of bonds to the amount of twenty-four thousand two hundred and fifty-five dollars, ($24,255.) On which coupons, amounting in the aggregate to forty-four thousand seven hundred and ninety dollars ($44,790,) the said Osterberg is entitled to a further credit on his said bid of eight thousand two hundred and thirty-nine dollars and twenty-nine cents ($8,239.29,) according to the terms of the decree of July thirteenth, A. D. eighteen hundred and seventy-five. Also bonds and past-due coupons belonging to the said first series of bonds issued under and secured by both the mortgages of June fifteenth, A. D. eighteen hundred and sixty-eight, and October twenty-third, A. D. eighteen hundred and sixty-eight, and certificates of indebtedness issued in lieu of coupons to the amount of two million seven hundred and twenty-nine thousand one hundred and twenty dollars (2,729,120,) not computing interest on said past-due coupons or certificates of indebtedness, also bonds and past-due coupons of the second series of bonds issued under and secured by the said mortgage of October twenty-third, A. D. eighteen hundred and sixty-eight, and certificates of indebtednees issued in lieu of coupons to the amount of twe million five hundred and fifty-eight thousand nine hundred and twenty-two dollars and fifty cents, ($2,558,-922.50,) not computing interest on any of said past-due coupons or certificates of indebtedness.

"And it further appearing from said master's report that he has
41 paid out from the proceeds of the sale in his hands, in accordance with the directions of the court and the said decree of July thirteenth, A. D. eighteen hundred and seventy-five, the sum of ninety-nine thousand and ninety-five dollars and eighteen cents ($99,095.18,) it is ordered that said report and payments be approved, and that from the proceeds of the sale of said mortgage property there be reserved, subject to the further order of this court, the sum of two hundred and twenty thousand nine hundred and four dollars and eighty-two cents ($220,-904.82,) for the payment of taxes for the years eighteen hundred and seventy-three and eighteen hundred and seventy-four, the expenses of litigation, the costs of court, and the protection of persons who have filed petitions claiming an interest in some part of the property held by the receiver at the time of said sale, or the proceeds thereof. And it is further ordered, adjudged, and decreed that from the balance of the proceeds of said sale the holders of bonds, coupons, certificates of indebtedness, issued in lieu of coupons, of the first series of bonds, numbered from one to five thousand, inclusive, are entitled to receive ten and four hundred and fifty-nine one-thousandths ($10\frac{459}{1000}$) per cent. of the amount due thereon, not computing interest on past-due coupons or certificates of indebtedness, and the holders of bonds, coupons, and certificates of indebtedness issued in lieu of coupons of said second series of bonds numbered from five thousand and one to nine thousand, inclusive,
are entitled to receive five and nine hundred and seventy-seven one-
42 thousandths ($5\frac{977}{1000}$) per cent. of the amount due on such bonds, coupons, and certificates of indebtedness, not computing interest on past-due coupons or certificates of indebtedness; and the master is hereby directed to give said Heyman Osterberg credit on his bid for said property on account of the bonds, coupons, and certificates of indebtedness paid in by him as aforesaid, at the percentage hereinbefore established, to wit: For the sum of four hundred and thirty-eight thousand three hundred and eighty-nine dollars and fourteen cents, ($438,389.14,) in addition to the said sum of six hundred and fifty-two

thousand five hundred and twenty-seven dollars ($652,527.00) in money, and the said sum of eight thousand two hundred and thirty-nine dollars and twenty-nine cents ($8,239.29) credit on account of coupons six, seven, eight, nine, and ten, as stated in said master's report, making a total credit to which the said Osterberg is entitled on account of his said purchase of one million and ninety-nine thousand one hundred and fifty-five dollars and forty-three cents, ($1,099,155.43;) and the said master is further ordered to deliver said bonds, coupons, and certificates of indebtedness so paid in by said Osterberg to the clerk of this court, to be dealt with as provided in the decree of July thirteenth, A. D. eighteen hundred and seventy-five, and from the proceeds of the sale in money in his hands, to pay to said clerk the sum of five hundred and fifty-three thousand four hundred and thirty-one dollars and eighty-two
43 cents, ($553,431.82,) which the clerk will proceed to distribute to the holder of outstanding bonds, coupons, or certificates of indebtedness issued in lieu of coupons, in the manner and at the rate herein established, and as directed by said decree of July thirteenth, A. D. eighteen hundred and seventy-five, first paying, in part, coupons six, seven, eight, nine, and ten, as therein provided.

"And it is further ordered that the said Heyman Osterberg, the purchaser at said sale, be permitted to retain in his possession, at six per cent. per annum interest, from the entry of this decree, two hundred and twenty thousand eight hundred and forty-four dollars and fifty-seven cents ($220,844.57) of the sum hereinbefore directed to be reserved, being the balance due from him on account of his said purchase, until the first day of April, A. D. eighteen hundred and seventy-six; and upon the payment thereof and interest, the sale of the said premises and the report thereof by the master shall in all things stand confirmed upon the order to that effect made by the court.

"And in the mean time the said Heyman Osterberg to have possession of the said mortgage property by him purchased, subject to all the limitations and conditions imposed by the decree of November third, A. D. eighteen hundred and seventy-five, upon his entering into bond made payable to William H. Bradley, the clerk of this court, and his successor in office, with surety to be approved by the court, in the penal sum of fifty thousand dollars, conditioned that the said Heyman
44 Osterberg will abide by and perform the conditions and limitations of the decree entered herein on the third day of November, A. D. eighteen hundred and seventy-five, and protect the parties entitled to share in the distribution of the said sum of two hundred and twenty thousand nine hundred and four dollars and eighty-two cents ($220,904.82) hereinbefore directed to be reserved from any loss or damage arising from the wrongful act, fault, or neglect of the said Osterberg in the management or operation of said railroad between the fifteenth day of January, A. D. eighteen hundred and seventy-six, and the first day of April, A. D. eighteen hundred and seventy-six; and also from any loss or damage arising on account of any liabilities of said road for operating or other expenses incurred during said period.

"It is further ordered that Heyman Osterberg, or in his absence the auditor of said road, make report to this court of the receipts and earnings of said road, and of all disbursements, whether for operating or other expenses of the same, made by the said Osterberg during the months of November and December, A. D. eighteen hundred and seventy-five, and of all liabilities incurred by or on account of said road during said two months; and that he make a like report of each month's earnings, receipts, and disbursements and liabilities every thirty days while

said road remains in his possession and subject to the order of this court, said reports to be certified by the auditor of said road.

"The coupons heretofore filed in this case by Max Budge,
45 Henry Budge, Leo Lehman, and Jacob H. Schiff are excepted from the provisions of this decree and are not entitled to any payment under the same."

And your petitioner further shows that on the 17th day of May, 1876, another decree was made and entered by this honorable court, the Hon. Henry W. Blodgett, district judge, presiding, as follows, viz:

"THE UNION TRUST COMPANY OF NEW YORK
vs.
"THE ROCKFORD, ROCK ISLAND AND ST. LOUIS Railroad Company et al. } In chancery.

"This cause came on to be further heard at this term, and was argued by counsel, and thereupon, upon consideration thereof, it was ordered, adjudged, and decreed as follows, viz: That the sale on the sixteenth day of August, A. D. 1875, by Henry W. Bishop, the master in chancery of this court, and the purchase at said sale by Heyman Osterberg in his own name, but in fact as trustee, for the sum of one million three hundred and twenty thousand dollars, (1,320,000,) of the mortgaged premises, property, rights, privileges, and franchises mentioned and set forth in the proceedings and the decree entered in this cause the thirteenth day of July, A. D. 1875, and the master's report of said sale heretofore made, be, and the same are in all things ratified and confirmed; and it appearing to the court that the said Heyman Osterberg, as trustee, has paid to the said Henry W. Bishop, master as aforesaid, the said sum
46 of one million three hundred and twenty thousand dollars, ($1,320,000,) with two thousand five hundred and two dollars and ninety-one cents ($2,503.91) of interest thereon, as required by the previous orders of this court, the said Henry W. Bishop, master as aforesaid, is hereby directed to make, execute, and deliver to the said Heyman Osterberg, as trustee, the purchaser at said sale, a good and sufficient deed, conveying to the said Osterberg, as trustee, and his assigns, the property, rights, privileges, and franchises so sold to and purchased by him, to wit, the entire railroad of said Rockford, Rock Island and St. Louis Railroad Company, with all branches and tracks to the coal-mines owned or leased by it, and also including all the said railroad's rights of way, depot-grounds, coal-lands, or other lands; all depots, station-houses, engine-houses, car-houses, freight-houses, grain-houses, grain-elevators, wood houses, coal-houses, or other buildings, and all car shops and machine shops; also all kinds of rolling-stock or equipments, machinery, and tools, held for use in connection with said Rockford, Rock Island and St. Louis Railroad, or its coal-lands and coal-mines, including all locomotives, cars, tenders, or other rolling-stock and equipments, and all implements, fuel, materials for the construction, operating, repairing, or replacing the said railroad or any of its branches, or in or for operating and working any of its coal-mines or any of its equipments; also all franchises connected with or relating to the said railroad, and also all rights, claims, and benefits in and to all leases, contracts, and agreements made with any parties owning any coal-lands, or min-
47 eral lands, or railroad or railroads, or with any other parties for any other property, together with all and singular the tenements and appurtenances thereunto belonging, and the reversions, remainders tolls, incomes, rents, issues, and profits thereof, and also all the estates,

rights, titles, and interests whatsoever, as well at law as in equity, of the said Rockford, Rock Island and St. Louis Railroad Company of, in, and to the same; also the entire railroad of the Orion and Minersville Railroad Company, with all the franchises, privileges, and appurtenances thereto belonging, and all other property, real and personal, belonging to said Rockford, Rock Island and St. Louis Railroad Company and Orion and Minersville Railroad Company, or either of them, including the property in the possession of William H. Ferry, the receiver in said cause at the time of said sale, or to which he was then entitled as such receiver, as follows:

"A road from Rock Island Junction to Port Byron Junction, thirty-nine and four tenths ($39\frac{4}{10}$) miles.

"At Rock Island, five-twelfths ($\frac{5}{12}$) miles.

"From Colona to Minersville, one and one-fourth tenths (.4) miles.

"From Orion to Monmouth, thirty-eight and three-tenths (38.3) miles.

"Branch road from Rock River Junction to Coal Mines at Cleveland, three and five-tenths (3.5) miles.

"A railroad from Monmouth to Alton Junction, one hundred and sixty one and six-tenths (161.6) miles.

"A detached road from Keithsburg to Sagetown, which has no connection with any of the other roads, seventeen and nine-tenths, (17.9) miles.

"A joint interest with the Chicago and Northwestern Railway from Rock Island Junction to Sterling, five and two-tenths (5.2) miles.

48 "A contract with the Chicago and Northwestern Railway Company for the joint use of said road between said points.

"A right of way from Port Byron Junction to Rock Island.

"A road from Orion to Minersville, a distance of seven and six-tenths (7.6) miles.

"A contract with the Indianapolis and St. Louis Railroad Company for the use of its road from Alton Junction to East St. Louis, twenty-one miles, and certain depot privileges and facilities at east St. Louis.

"A contract with the Chicago and Rock Island Railroad for the use of its track between Colona and Port Byron Junction, and from Port Byron Junction to Rock Island.

"Side tracks twenty-one and five-tenths (21.5) miles.

"All the depots along the line of the Rockford, Rock Island and St. Louis Railroad excepting at Sterling, Rock Island Junction, Port Byron Junction, Colona, Alexandria, Monmouth, Bushnell, Alton Junction, and the freight-depot at Chapin.

"Car-shop, blacksmith-shop, machine-shop and round-house at Beardstown, together with the tools and machinery in said shops.

"An engine house at Rock Island Junction, Sagetown, and Keithsburg, sundry supplies on hand averaging fifteen thousand dollars worth.

"The following rolling-stock, fourteen (14) first and second class coaches and sleepers, fifteen (15) way cars, six (6) baggage and mail cars, three hundred and ninety-one (391) freight cars, ninety-nine (99) stock cars, ninety (90) flat cars, three hundred and seventeen (317) coal cars, thirty (30) locomotives.

"The following real estate in Henry County, Illinois: lots (1) two (2) three (3) and five (5) in block number ten (10) Cleveland, with

49 four small frame buildings, cut in two by side track to coal mines. Grantor's title based on tax deed.

"In Greene County, Illinois:

"The northeast quarter ($\frac{1}{4}$) of the northeast quarter ($\frac{1}{4}$) of section

thirty-six, (36,) town. ten, (10,) of range ten (10) west of the third (3d) principal meridian.

"In Schuyler County, Illinois:

"The southeast quarter (¼) of section nineteen, (19,) town. one, (1,) north, of range one, (1,) east of the fourth (4th) principal meridian, containing one hundred and sixty (160) acres.

"The fractional southwest quarter (¼) of section twenty, (20,) town. one, (1,) north, of range one, (1,) east of the fourth (4th) principal meridian, containing sixty-five and twenty-one one-hundredths (65.21) acres.

"All of fractional section twenty-nine, (29,) in town. one, (1,) north, of range one, (1,) east of the fourth principal meridian, containing twenty-eight and seventy-seven one hundredths (28.77) acres.

"In Cass County, Illinois:

"Sand pit, being in the south half (½) of the southeast quarter (¼) of section thirty-five, (35,) town. eighteen, (18,) range twelve (12) west of the third (3d) principal meridian, containing ten and eighteen one hundredths (10.18) acres.

"In Scott County, Illinois:

"Sand-pit, about one mile from railroad, being in the northwest quarter (¼) of the northwest quarter (¼) of section one, (1,) town. thirteen, (13,) range thirteen (13) west of the third (3) principal meridian, containing ten (10) acres.

"In Henry County, Illinois:

"PADDLEFORD FARM.—The east one half (½) of the northeast
50 quarter (¼) of section four, (4,) township seventeen, (17,) north, range two (2) east of the fourth (4th) principal meridian, containing eighty (80) acres. The east one-half (½) of the southeast quarter (¼) of section four, (4,) township seventeen (17) north, range two (2) east of the fourth (4th) principal meridian, containing eighty acres. The west one-half (½) of the northwest (¼) of section three. (3,) in township seventeen, (17,) north, of range two (2) east of the fourth principal meridian, containing eighty acres.

"SHEPHERD FARM.—The southwest quarter (¼) of section thirteen, (13,) township seventeen, (17,) north, of range one, (1,) east of the fourth (4th) principal maridian, containing one hundred and sixty (160) acres. The south one-half (½) of the southeast quarter (¼) of section fourteen, (14,) township seventeen, (17,) north, of range one (1) east of the 4th principal meridian, containing eighty (80) acres. The south one-half (½) of the south one half (½) of the east one-half (½) of the northeast quarter (¼) of section fourteen, (14,) township seventeen, (17,) north of range one (1) east of the fourth (4th) principal meridian, containing twenty acres, (20,) all in Henry County, Illinois.

"In McCoupin County, Illinois:

"The west one-half (½) of the west one-half (½) of the northeast quarter (¼) of section thirty-one, (31,) township ten, (10,) north of range nine, (9,) west of the third principal meridian, containing forty (40) acres.

The northwest quarter (¼) of the northwest quarter (¼) of section
thirty-one, (31,) in township ten, (10,) north of range nine, (9,) west
51 of the third (3d) principal meridian, containing forty (40) acres.

"The northeast quarter (¼) of the northwest quarter (¼) of section thirty-one (31), township ten (10) north, of range nine (9) west, of the third (3d) principal meridian, containing forty (40) acres.

"The southeast quarter (¼) of the northwest quarter (¼) of section thirty-one (31), township (10) north, of range nine (9) west, of the third (3d) principal meridian, containing forty (40) acres, making a total in Macoupin County of one hundred and sixty (160) acres; lot number six

(6), in block number three (3), in Moore's addition to the town of Brighton.

"In Rock Island County, Illinois:

"That part of lot five (5), lying south of the railroad, in block number (2), in Spencer's and Case's addition to Rock Island.

"The north one hundred and twenty (120) feet of lots number three (3) and four (4), in block number three (3), in Wood's second addition to Moline.

"The north one hundred and twenty (120) feet, of lot number seven (7), in block number nineteen (19), in the old town of Moline.

"Fractional part of lots number two (2) and three (3), in block number fifteen (15), in the old town of Moline, lying between the Rockford, Rock Island and St. Louis Railroad, and the Chicago, Rock Island and Pacific Railroad.

"And it further appearing to the court that since said sale William H. Ferry, the receiver herein, has compromised, under the direc-
52 tion of the court, a claim in favor of said Rockford, Rock Island and St. Louis Railroad Company, existing at the time of said sale against one H. H. Boody, and under said compromise has acquired as such receiver title to the following premises, to wit: nine undivided sixteenth parts ($\frac{9}{16}$), (the whole into sixteen parts divided), of all that certain tract or piece of land situate in Barry Township, Schuylkill County, Pennsylvania, bounded as follows: Beginning at a stone a corner in lands of John Moser; thence north sixty-eight (68°) degrees, east one hundred and thirty perches to a stone; thence north forty-one degrees, east forty perches to a stone; thence south forty nine degrees, east seventy-six perches to a black oak; thence north eighty-one and one-quarter degrees, east eighty perches to a black oak; thence south fifty-eight and one-half degrees, east sixty-five perches to a white oak; thence north eighty-six and one half degrees, east fourteen perches to a stone; thence south fifty-eight degrees, west three hundred and twelve perches to a post; thence north twenty-one and one-half degrees, west two hundred perches by land of Harold Kramer and John Moser, to the place of beginning, containing three hundred and twenty-three acres more or less; and also nine undivided sixteenths parts ($\frac{9}{16}$) (the whole into sixteen parts divided), of all that tract or certain piece of land situate in Barry Township, Schuylkill County aforesaid, known as the Henry G. Weaver tract, containing two hundred and forty-seven acres and twenty-seven perches,
53 bounded and described as follows: Beginning at a stone corner of the Henry G. Weaver tract, thence south forty-eight and one-half degrees, east one hundred perches to a stone; thence north forty-one degrees, east forty perches to a stone; thence south forty-nine degrees, east twenty-nine perches to a stone; thence north sixty-eight and one-half degrees, east one hundred and eighty-one and sixteenths perches to a stone; thence north eighteen and one-half degrees, west one hundred and ninety-five perches to a stone, thence south sixty-seven and one-half degrees, west two hundred and fifty-eight perches to a stone; thence south forty-four degrees, west seven perches to a stone; thence south forty-nine degrees, east forty perches to a stone; thence south forty degrees, west eighty-three perches to a stone, and the place of beginning.

"It being understood that the quantity of land conveyed, or intended to be, to said receiver under the foregoing description was about three hundred and twenty and one-half acres more or less, together with all and singular the buildings, improvements, ways, roads, lands, woods, mines, minerals, waters, water-courses, rights, liberties, privileges, hereditaments, and appurtenances whatsoever, thereunto belonging or in any

wise appertaining. And that said compromise has been approved and confirmed by the court.

"It is further ordered, adjudged, and decreed, that said master also convey in said deed to said Osterberg, in addition to the premises hereinbefore mentioned and described, the said last-described premises.

54 "And it further appearing to the court from the report of the said receiver, William H. Ferry, that the title to the following described pieces of land is vested in him for the benefit of said railroad, to wit, block number one hundred and one and one hundred and four in the city of Beardstown, two strips of land each 300 feet wide, being 150 feet in width on each side of the center line of the main track of the said Rockford, Rock Island and St. Louis Railroad, as the same is located and operated over and across and upon the southeast quarter of sect. 30, and the northeast quarter of section thirty, (30,) 1 N., R. 1 east, of the fourth principal meridian, which pieces of land constituted part of the right of way and appurtenances of said Rockford, Rock Island and St. Louis Railroad:

"It is ordered, adjudged, and decreed that the said master include the same in the said deed to the said Heyman Osterberg as trustee-purchaser as aforesaid.

"It is further ordered, adjudged, and decreed that the said Heyman Osterberg, as trustees, and his assigns, are entitled to succeed to all the estate, rights, and privileges of said railroad company under their respective charters or acts of incorporation, and to control, manage, and operate said railroads under said charters and acts of incorporation in the same manner as said railroad companies were authorized by said charters and acts of incorporation to control, manage, and operate the same.

55 "It is further ordered, adjudged, and decreed that the said defendants and all persons claiming or to claim from or under them, and all persons having a lien subsequent to the mortgages in the pleadings mentioned by judgment or decree upon the premises, rights, and property contained in said mortgages, and his and their heirs and all persons claiming under them, be forever barred and foreclosed of and from all equity of redemption and claim of, in, or to said mortgaged premises, rights, franchises, and property and every part and parcel thereof.

"And it is further ordered, adjudged, and decreed that the said William H. Ferry, the receiver, execute and deliver to the said Heyman Osterberg, trustee, a deed assigning and transferring to the said Osterberg, as trustee, and his assigns, all the right, title, and interest, by him acquired as such receiver, in or to the above mentioned and described property, or any part thereof."

That no exceptions were filed to the order of November 16, A. D. 1875.

And your petitioner further shows, that afterwards, and in pursuance of the said last-mentioned decree, the said Henry W. Bishop as such master, on the 18th day of May, 1876, did make and execute in due form, and deliver to your petitioner, his deed in manner and form following, viz:

56 "This indenture, made this eighteenth (18th) day of May, A. D. 1876, by and between Henry W. Bishop, as master in chancery of the circuit court of the United States, in and for the northern district of Illinois, party to the first part, and Heyman Osterberg, party of the second part, witnesseth:

"Whereas, on the 13th day of July, A. D. 1875, one of the days of the July term, A. D. 1875, of the circuit court of the United States for the northern district of Illinois, it was, among other things, or-

dered, adjudged, and decreed by the said court, in chancery sitting in the city of Chicago in said district, in a certain cause then depending in said court, between the Union Trust Company, of New York, complainant, and The Rockford, Rock Island & St. Louis Railroad Company, The Orion and Minersville Railroad Company, and others, defendants, that the mortgaged premises in said bill of complaint mentioned, including the entire railroad of said Rockford, Rock Island & St. Louis Railroad Company, with all branches and tracks to the coal-mines owned or leased by it, and also including all the railroads, rights of way, depot-grounds, coal-lands or other lands, all depots, station-houses, engine-houses, car-houses, freight-houses, grain-houses, grain-elevators, wood-houses, coal-houses, or other buildings, and all car-shops and machine-shops; also all kinds of rolling-stock or equipments, machinery and tools held for use in connection with said Rockford, Rock Island
57 and St. Louis Railroad Company, or its coal-lands and coal-mines, including all locomotives, cars, tenders, or other ro lingstock and equipments, and all other implements, fuel, and materials for the construction, operating, repairing, or replacing the said railroad or any of its branches, or in or for operating and working any of its coal-mines, or any of its equipments; also all franchises connected with or relating to the said railroad, and also all rights, claims, and benefits in and to all leases, contracts, and agreements made with any parties owning any coal-lands, or mineral lands, or railroad, or railroads, or with any other parties for any other prope ty, together with all and singular the tenements and appurtenances thereunto belonging, and the reversions, remainders, tolls, incomes, rents, issues, and profits thereof, and also all the estates, rights, titles, and interests whatsoever, as well at law as in equity, of the said Rockford, Rock Island and St. Louis Railroad Company of, in, and to the same; also, the entire railroad of the Orion and Minersville Railroad Company, with all the franchises, privileges, and appurtenances thereto belonging, and all other property, real and personal, belonging to said Rockford, Rock Island & St. Louis Railroad Company, and to said Orion & Minersville Railroad Company, or either of them, and which was then in the possession of the receiver appointed in said suit and described or referred to in said decree, and all other property, rights, franchises, and things which had been
58 acquired by purchase or otherwise by the said receiver during the pendency of said suit for use in connection with said railroads, and which should be at the time of the sale thereby decreed in his possession, or to which he might then be entitled, be sold by Henry W. Bishop, the master in chancery of said court, together as one property, and not in separate parcels, and in the manner directed in said decree, in order to satisfy and pay the amount due on said mortgages, the costs of said proceeding, and the said several sums in said decree directed to be paid; that any sale under said decree should be at public auction, to the highest bidder; two hundred thousand dollars of the sum bid to be paid in cash at the time of sale, and the balance as provided by said decree when said sale (to be made at Chicago, in the State of Illinois, at such time as said master should appoint) should be confirmed by the court; that notice of such sale should be given by said master by advertisement thereof daily, six times in each week, for three successive weeks, preceding the day of sale, in one daily newspaper of general circulation in each of the cities of Chicago and New York.

"And whereas the said Henry W. Bishop, master in chancery of said court, in pursuance of the said order and decree of the said court, and of another order of said court entered on the tenth day of Au-

gust, A. D. 1875, did on the sixteenth day of August, A. D. 1875, sell at public auction, at Chicago, in the State of Illinois, the mort-
59 gaged premises in said decree mentioned, having first given previous notice of said sale, as required by the orders and decrees aforesaid, at which sale the premises so sold were struck off to Heyman Osterberg for the sum of one million three hundred and twenty thousand dollars, that being the highest sum bid for the same. And whereas by an order and decree of said court, entered in said cause on the seventeenth day of May, A. D. 1876, it was, among other things, ordered, adjudged, and decreed that the sale so made as aforesaid by the said Henry W. Bishop, the master, on the sixteenth day of August, A. D. 1875, and the purchase at said sale by Heyman Osterberg in his own name, but in fact as trustee, according to his declaration of trust on file in said cause, for the sum of thirteen hundred and twenty thousand ($1,320,000) dollars of the mortgage premises, property, rights, privileges and franchises mentioned and set forth in the pleadings and in the said decree of July 13th, 1875, and the master's report of said sale theretofore made, be, and the same were, in all things ratified and confirmed; and it appearing to the court that the said Heyman Osterberg had paid to the said Henry W. Bishop, master as aforesaid, the said sum of thirteen hundred and twenty thousand dollars, with twenty-five hundred and two dollars and ninety-one cents ($2,502.91) of interest thereon, as required by the previous orders of said court, the said master was directed in and by said decree of the seventeenth day of May, A. D. 1876, to make, execute, and deliver
60 to the said Heyman Osterberg, trustee as aforesaid, the purchaser at said sale, and his assigns, a good and sufficient deed, conveying to him and his assigns the property, rights, privileges, and franchises so sold and purchased by him, and hereinafter particularly described;

"And whereas by said decree of the seventeenth day of May, A. D. 1876, it was further ordered, adjudged, and decreed that the said Heyman Osterberg, trustee as aforesaid, and his assigns were entitled to succeed to all the estate, rights, and privileges of said railroad companies under their respective charters or acts of incorporation, and to control, manage, and operate the said railroads under said charters and acts of incorporation in the same manner as said railroad companies were authorized by said charters and acts of incorporation to control, manage, and operate the same;

"And whereas it was by said decree of the seventeenth day of May, A. D. 1876, further ordered, adjudged, and decreed that the said master also include in his deed to the said Heyman Osterberg, the purchaser, the tracts of land hereinafter described as situated in the county of Schuylkill, and State of Pennsylvania, which lands it is stated in said decree were acquired in satisfaction of a claim of said Rockford, Rock Island & St. Louis Railroad Company against one H. H. Boody, existing at the time of said sale:

"Now, therefore, this indenture witnesseth, that in pursuance of the orders and decrees of said court hereinafter set forth and referred
61 to, and in consideration of the said sum of thirteen hundred and twenty-two thousand five hundred and two dollars and ninety-one cents ($1,322,502.91) in hand paid to said party of the first part, the receipt whereof is hereby acknowledged, the said party of the first part, as such master in chancery aforesaid, hath remised, released, and conveyed, and by these presents doth remise, release, and convey, unto the said party of the second part, trustee as aforesaid, and his assigns, all the following-described premises, being the premises so as aforesaid

by said master sold in pursuance of said first-mentioned decree, and particularly described and ordered to be conveyed by said decree of the seventeenth day of May, A. D. 1876, to wit:

"The entire railroad of said Rockford, Rock Island & St. Louis Railroad Company, with all branches and tracks to the coal-mines, owned or leased by it, and also including all the railroads, rights of way, depot-grounds, coal lands, or other lands, all depots, station-houses, engine-houses, car-houses, freight-houses, grain-houses, grain-elevators, wood-houses, coal-houses, or other buildings, and all car-shops and machine-shops; also all kinds of rolling-stock or equipments, machinery, and tools held for use in connection with said Rockford, Rock Island & St. Louis Railroad, or its coal-lands and coal-mines, including all locomotives, cars, tenders, or other rolling-stock and equipments, and all implements, fuel, and material for the construction, operating, repairing, or replacing the said railroad or any of its branches, or in or for
62 operating and working any of its coal-mines, or any of its equipments; also all franchises connected with or relating to the said railroad, and also all rights, claims, and benefits in and to all leases, contracts, and agreements made with any parties owning any coal-lands or mineral lands, or railroad or railroads, or with any other parties, for any other property, together with all and singular the tenements and appurtenances thereunto belonging, and the reversions, remainders, tolls, incomes, rents, issues, and profits thereof; and also all the estates, rights, titles, and interests whatsoever, at well at law as in equity, of the said Rockford, Rock Island & St. Louis Railroad Company of, in, and to the same; also the entire railroad of the Orion and Minersville Railroad Company, with all the franchises, privileges, and appurtenances thereto belonging, and all other property, real and personal, belonging to said Rockford, Rock Island & St. Louis Railroad Company and Orion & Minersville Railroad Company, or either of them, including the property in the possession of William H. Ferry, the receiver in said cause at the time of said sale, or to which he was then entitled as such receiver, as follows: A road from Rock Island Junction to Port Byron Junction, thirty-nine and four-tenths (39.4) miles; at Rock Island, five-twelfths ($\frac{5}{12}$) miles; from Colona to Minersville, one and four-tenths (1.4) miles; from Orion to Monmouth, thirty-eight and three-tenths (38.3) miles; branch-road from Rock River Junction to coal-mines at Cleveland, three and five-tenths (3.5) miles; a railroad from Monmouth to Alton
63 Junction, one hundred and sixty-one and six-tenths (161.6) miles. a detached road from Keithsburg to Sagetown, which has no connection with any of the other roads, seventeen and nine-tenths (17.9) miles; a joint interest with the Chicago and Northwestern Railway from Rock Island Junction to Sterling, five and two-tenths (5.2) miles; a contract with the Chicago and Northwestern Railway Company for the joint use of said road between said points; a right of way from Port Byron Junction to Rock Island; a road from Orion to Minersville, a distance of seven and six-tenths (7.6) miles; a contract with the Indianapolis and St. Louis Railroad Company for the use of its road from Alton Junction to East St. Louis, twenty-one miles, and certain depot privileges and facilities at East St. Louis; a contract with the Chicago and Rock Island Railroad for the use of its track between Colona and Port Byron Junction, and from Port Byron Junction to Rock Island, side tracks, twenty-one and five-tenths (21.5) miles; all the depots along the line of what is known as the Rockford, Rock Island & St. Louis Railroad, excepting at Sterling, Rock Island Junction, Port Byron Junction, Colona, Alexandria, Monmouth, Bushnell, Alton Junction, and

the freight-depot at Chapin, car-shop, blacksmith-shop, machine-shop, and round-house at Beardstown, together with the tools and machinery in said shops; an engine-house at Rock Island Junction, Sagetown, and Keithsburg; sundry supplies on hand, averging fifteen thousand dollars' worth.

64 "The following-rolling stock: Fourteen (14) first and second class coaches and sleepers, fifteen (15) way-cars, six (6) baggage and mail cars, three hundred and ninety-one (391) freight-cars, ninety-nine (99) stock-cars, ninety (90) flat cars, three hundred and seventeen (317) coal-cars, thirty (30) locomotives.

"The following real estate in Henry County, Illinois:

"Lots one, (1,) two, (2,) three, (3,) and five, (5,) in block number (10) ten, Cleveland, with four small frame buildings, cut in two by side-track to coal-mine, grantor's title based on tax-deed.

"In Green County, Illinois:

"The northeast quarter (¼) of the northeast (¼) of section thirty-six, (36,) town. ten, (10,) of range ten (10) west of the third (3d) principal meridian.

"In Schuyler County, Illinois:

"The southeast quarter (¼) of section (19,) town. one (1) north, of range one (1) east of the fourth (4th) principal meridian, containing one hundred and sixty (160) acres; the fractional southwest quarter (¼) of section twenty, (20,) town. one (1) north, of range one (1) east of the fourth (4th) principal meridian, containing sixty-five and twenty-one one-hundredths (65.21) acres; all of fractional section twenty-nine, (29,) in town. one (1) north, of range one (1) east of the fourth principal meridian, containing twenty-eight and seventy-seven one-hundredths (28.77) acres.

"In Cass County, Illinois:

"Sand-pit, being in the south half (½) of the southeast quarter (¼) of section thirty-five, (35,) town. eighteen, (18,) range twelve (12) west
65 of the third (3d) principal meridian, containing ten and eighteen one-hundredths (10.18) acres.

"In Scott County, Illinois:

"Sand-pit about one mile from railroad, being in the northwest quarter (¼) of the northwest quarter (¼) of section one, (1,) town. thirteen, (13,) range thirteen (13) west of the third (3d) principal meridian, containing ten (10) acres.

"In Henry County, Illinois:

"PADDLEFORD FARM.—The east one-half (½) of the northeast quarter (¼) of section four, (4,) township seventeen (17) north, range two (2) east of the fourth (4th) principal meridian, containing eighty (80) acres; the east one-half (½) of the southest quarter (¼) of section four, (4,) township seventeen (17) north, range two (2) east of the fourth (4th) principal meridian, containing eighty (80) acres; the west one-half (½) of the northwest (¼) of section three, (3,) in township seventeen (17) north, of range two (2) east of the fourth principal meridian, containing eighty acres.

"SHEPPARD FARM.—The southwest quarter (¼) of section thirteen, (13,) township seventeen (17) north, of range one (1) east of the fourth (4th) principal meridian, containing one hundred and sixty (160) acres; the south one-half (½) of the southeast quarter (¼) of section fourteen, (14,) township seventeen (17) north, of range one (1) east of the fourth principal meridian, containing eighty (80) acres; the south one-half (½) of the south one-half (½) of the east one-half of the northeast quarter (¼) of section fourteen, (14,) township seventeen (17) north, of

range one (1) east of the fourth (4th) principal meridian, containing twenty (20) acres; all in Henry County, Illinois.

"In Macoupin County, Illinois:

"The west one-half ($\frac{1}{2}$) of the west one-half ($\frac{1}{2}$) of the northeast quarter ($\frac{1}{4}$) of section thirty-one, (31), township ten (10) north, of range nine (9) west of the third (3d) principal meridian, containing forty (40) acres; the northwest quarter ($\frac{1}{4}$) of the northwest quarter ($\frac{1}{4}$) of section thirty-one, (31,) in township ten (10) north, of range nine (9) west of the third (3rd) principal meridian, containing forty (40) acres; the northeast quarter ($\frac{1}{4}$) of the northwest quarter ($\frac{1}{4}$) of section thirty-one, (31,) township ten (10) north, of range nine (9) west of the third (3rd) principal meridian, containing forty (40) acres; the southeast quarter ($\frac{1}{4}$) of the northwest quarter ($\frac{1}{4}$) of section thirty-one, (31,) township ten (10) north, of range nine (9) west of the third (3rd) principal meridian, containing forty (40) acres, making a total in Macoupin County of one hundred and sixty (160) acres; lot number six, (6,) in block number three, (3,) in Moor's addition to the town of Brighton.

"In Rock Island County, Illinois:

"That part of lot five (5) lying south of the railroad, in block number two, (2,) in Spencer and Case's addition to Rock Island; the north one hundred and twenty (120) feet of lots numbers three (3) and four, (4,) in block number three, (3,) in Wood's second addition to Moline; the north, one hundred and twenty (120) feet of lot number seven, (7,)
67 in block number nineteen, (19,) in the old town of Moline; fractional parts of lots number two (2) and three, (3,) in block number fifteen, (15,) in the old town of Moline, lying between the Rockford, Rock Island & St. Louis Railroad and the Chicago, Rock Island and Pacific Railroad

"In Schuylkill County, Pennsylvania, the following premises, to wit:

"Nine undivided sixteenth parts ($\frac{9}{16}$) (the whole into sixteen parts divided) of all that certain tract or piece of land situate in Barry Township, Schuylkill County, Pennsylvania, bounded as follows: Beginning at a stone a corner in lands of John Moser; thence north sixty-eight (68°) degrees east one hundred and thirty perches to a stone; thence north forty-one degrees east forty perches to a stone; thence south forty-nine degrees east seventy-six perches to a black oak; thence north eighty-one and one-quarter degrees east eighty perches to a black oak; thence south fifty-eight and one-half degrees east sixty-five perches to a white oak; thence south eighty-six and one-half degrees east fourteen perches to a stone; thence south fifty-eight degrees west three hundred and twelve perches to a post; thence north twenty-one and one-half degrees west two hundred perches by land of Harold Kramer and John Moser to the place of beginning, containing three hundred and twenty-three acres, more or less. And also nine undivided sixteenth parts ($\frac{9}{16}$) (the whole into sixteen parts divided) of all that tract
68 or certain piece of land situate in Barry Township, Schuylkill County, aforesaid, known as the Henry G. Weaver tract, containing two hundred and forty-seven acres and twenty-seven perches, bounded and described as follows: Beginning at a stone corner of the Henry G. Weaver tract; thence south forty-eight and one-half degrees east one hundred and thirty-two perches to a stone; thence north forty-one degrees east forty perches to a stone; thence south forty-nine degrees east twenty-nine perches to a stone; thence north sixty-eight and one-half degrees east one hundred and eighty-one and six-tenths perches to a stone; thence north eighteen and one-half degrees west one hundred and ninety-five perches to a stone; thence south sixty-

seven and one-half degrees west two hundred and fifty-eight perches to a stone; thence south forty-four degrees west seven perches to a stone; thence south forty-nine degrees east forty perches to a stone; thence south forty degrees west eighty-three perches to a stone and the place of beginning.

"And also the following-described pieces or parcels of land: Blocks numbered one hundred and one (101) and one hundred and four, (104,) in the city of Beardstown; two strips of land, each three hundred feet wide, being one hundred and fifty feet in width on each side of the center line of the main track of the said Rockford, Rock Island and St. Louis Railroad, as the same is located and operated over and across and upon the southeast quarter of section thirty (30) north, range one (1)
69 east of the fourth principal meridian, which pieces or parcels of land constitute part of the right of way and appurtenances of said Rockford, Rock Island & St. Louis Railroad: To have and to hold the said premises above described and hereby intended to be granted to said party of the second part, trustee as aforesaid, and his assigns, forever.

"In witness whereof, I have hereunto set my hand and seal, this 18th day of May, A. D. 1876, and of the Independence of the United States the 100th year.

"HENRY W. BISHOP, [SEAL.]
"*Master in Chancery, U. S. Cir. Court Northern Dist. of Illinois.*

"In presence of—
F. W. COLE.

"The words 'the southeast quarter of section three (3) and' were erased before signing, and as such master in chancery aforesaid.

HENRY W. BISHOP,
"*Master in Chancery, U. S. Cir. Court North. Dist. of Ill.*

"In presence of—
"JNO. W. COLLE.

"STATE OF ILLINOIS,
"*Cook County, ss:*

"I, Norman Hall, a notary public in and for said county, in the State aforesaid, do hereby certify that Henry W. Bishop, who is personally known to me to be the same person whose name is subscribed to
70 the annexed deed of conveyance, appeared before me this day in person, and acknowledged that he, as master in chancery, had signed, sealed, and delivered the said instrument of writing, as his free act and deed, for the uses and purposes therein expressed.

"Given under my hand and notarial seal this eighteenth day of May, A. D. 1876.

[NOTARIAL SEAL.] "NORMAN HALL,
"*Notary Public.*"

And your petitioner further shows that afterwards, on the 22d day of May, A. D. 1876, the said William H. Ferry, as receiver as aforesaid, made and executed in due form, and delivered to your petitioner, his deed, in manner and form following, viz:

"This indenture made this twenty-second day of May, A. D. 1876, by and between William H. Ferry, receiver of the Rockford, Rock Island and St. Louis Railroad Company, party of the first part, and Heyman Osterberg, trustee, purchaser of the railway of said company, party of

the second part, witnesseth: That the said party of the first part, under and by virtue of an order entered the seventeenth day of May, A. D. 1876, in the circuit court of the United States for the northern district of Illinois, in the suit of The Union Trust Company of New York versus The Rockford, Rock Island and St. Louis Railroad Company, et al., and in consideration of the of one dollar
71 to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has remised, released, and quit-claimed, and by these presents doth remise, release, and quit-claim, unto said Heyman Osterberg, trustee, and to his assigns, the following tracts and parcels of lands, situated in the county of Henry, and State of Illinois, to wit: The east half ($\frac{1}{2}$) of the northeast quarter of section four, in township seventeen, range two east; the east half of the southeast quarter of section four, township seventeen, range two east; the southwest quarter of section thirteen, township seventeen, range one east; the west half of the northwest quarter of section three, township seventeen, range two east; the east half of the southeast quarter and the south half of the south half of the east half of the northeast quarter of section fourteen, township seventeen, range one east. Also the following tracts of land, situate in Macoupin County, in the State of Illinois: The west half of the west half of the northeast quarter, and the northwest quarter of the northwest quarter and the northeast quarter of the northwest quarter and the southeast quarter of the northwest quarter of section thirty-one, township ten, range number nine west. Also the following lots or parcels of land, situate in Rock Island County, and State of Illinois:

"That part of lot five, in block number two, in Spencer and Case's addition to Rock Island, which lies south of the railroad;
72 the north one hundred and twenty feet of lots three and four, in block three, in Wood's second addition to Moline; the north one hundred and twenty feet of lot seven, in block number nineteen, of the old town of Moline; also, that part of lots two and three, in block fifteen, in the old town of Moline, which lies between the railroads; also, lot number six, in block number three, in Moore's addition to Brighton, in Macoupin County; also, blocks number one hundred and one and one hundred and four, in the city of Beardstown, Cass County, Illinois; also, a strip of land three hundred feet wide, being one hundred and fifty feet in width on each side of the center line of the main track of the Rockford, Rock Island and St. Louis Railroad, as the same is now located and operated over, across, and upon the southeast quarter of section thirty, township one north, range one east of the fourth principal meridian, and across and upon the southeast quarter of the northeast quarter of the same section; also, the following tracts of land, being in the county of Schuylkill and State of Pennsylvania, described as follows: Nine undivided sixteenth ($\frac{9}{16}$) parts (the whole into sixteen parts divided) of all that certain tract or piece of land situate in Barry Township, Schuylkill County, Pennsylvania, bounded as follows: Beginning at a stone a corner in lands of John Moser; thence north sixty-eight degrees east one hundred and thirty perches to a store; thence north forty-one degrees east forty perches to a store; thence south forty-
73 nine degrees east seventy-six perches to a black oak; thence north eighty-one and one-quarter degrees east eighty perches to a black oak; thence south fifty-eight and one-half degrees east sixty-five perches to a white oak; thence north eighty-six and one-half degrees east fourteen perches to a stone; thence south fifty-eight degrees west three hundred and twelve perches to a post; thence north twenty-

one and one-half degrees west two hundred perches by land of Harold Kramer and John Moser to the place of beginning, containing three hundred and twenty-three acres, more or less. And also nine undivided sixteenth parts ($\frac{9}{16}$) (the whole into sixteen parts divided) of all that certain tract or piece of land situate in Barry Township, Schuylkill County aforesaid, known as the Henry G. Weaver tract, containing two hundred and forty-seven acres and twenty-seven perches, bounded and described as follows: Beginning at a stone corner of the Henry G. Weaver tract, thence south forty-eight and a half degrees east one hundred and thirty-two perches to a stone; thence north forty-one degrees east forty perches to a stone; thence south forty-nine degrees east twenty-nine perches to a stone; thence north sixty-eight and a half degrees east one hundred and eighty-one and six-tenths perches to a stone; thence north eighteen and a half degrees west one hundred and ninety-five perches to a stone; thence south sixty-seven and a half
74 degrees west two hundred and fifty-eight perches to a stone; thence south forty-four degrees west seven perches to a stone; thence south forty-nine degrees east forty perches to a stone; thence south forty degrees west eighty-three perches to a stone and the place of beginning, it being the land conveyed to said William H. Ferry, as receiver as aforesaid, by David Augustus Boody and Abby, his wife, by deed dated April 24th, A. D. 1875.

"Also all the property, real and personal, wherever found, and all contracts for the purchase of land and all other equitable interests, things in action, and other effects which belonged to said railroad company, or were held in trust for said company, or in which said company had any beneficial interest, and which came to the hands or possession of said William H. Ferry, as receiver of said Rockford, Rock Island and St. Louis Railroad Company, or the title of which has become vested in said Ferry as such receiver by any surrender, transfer, or conveyance from any person or corporation whatsoever, and also all deeds, writings, leases, muniments of title relating or appertaining to the property, equitable interests, things in action, and effects herein conveyed, the true intent and meaning of this instrument being to convey to the grantee named herein all the property, of whatever nature, conveyed to said Ferry as receiver, as aforesaid, by the Rockford, Rock Island and St. Louis Railroad Company, by deed dated November ninth,
75 A. D. 1874, and all the property which actually came to his possession conveyed to said Ferry, as receiver, by deed from Henry Curtis, junior, bearing date March fourth, A. D. 1876, and by the deed from David Augustus Boody and wife hereinbefore referred to, and all the property, real and personal, which said Ferry holds as receiver of said Rockford, Rock Island and St. Louis Railroad Company, either under and by virtue of the order of the circuit court of the United States for the northern district of Illinois made and entered in the suit of the Union Trust Company of New York versus said railroad company and others, or by virtue of any surrender, release, transfer, or conveyance heretofore made to said Ferry, as such receiver, by any person or corporation, the right, title, and interest hereby conveyed being the right, title, and interest of said William H. Ferry, as such receiver, and not otherwise.

"To have and to hold unto the said Heyman Osterberg, trustee, according to the declaration of trust made by him & filed in the circuit court of the United States for the northern district of Illinois in the suit of the Union Trust Company of New York versus The Rockford, Rock Island and St. Louis Railroad Company et al., and to his assigns forever.

"In witness whereof the said William H. Ferry has hereunto set his hand and seal the day and year first above written.

(Signed) "WILLIAM H. FERRY,
"*Receiver Rockford, R. I. & St. Louis Railroad.*"

76 And your petitioner further shows that said receiver, under the first above-named decretal order, and under the decretal order of the 3rd day of November, A. D. 1875, continued to act as such in the discharge of his trust, as imposed by said first order and modified by the second last-above mentioned, and to receive compensation therefor up to and until the 26th day of July, A. D. 1876, when he made out and filed with this court his final account and report, and was discharged from his office and trust, his compensation for his services, after surrendering possession to your petitioner, being $6,000 & upwards.

And your petitioner further shows that the said William H. Ferry, by his said final report and accounting, stated to this court that he had in his hands, as such receiver, four United States 5-20 bonds of the face-value of $1,000 each, but of greater value in lawful money, upon which he had collected in interest 133\frac{80}{100}$ in currency, which he also held; and also the sum of one thousand three hundred and ninety-five dollars and $\frac{72}{100}$, in lawful money, which said bonds and money he received from Henry Curtis, jr., upon the settlement and in the discharge of the trust of said Curtis, in the manner hereinafter mentioned; and that he also had received, and then held as such receiver, the further sum of two thousand dollars from Cornelius Lynde, in like manner as hereinafter mentioned.

And your petitioner further shows that said receiver did then and there report that he had in his hands, after having paid or pro-
77 vided for the payment of all claims as directed by this court, the further sum of seven thousand four hundred and seventeen dollars and thirteen cents, a balance of moneys received by him as such receiver from the earnings of said railroad while in his possession, and upon a final settlement of his trust and account, and that thereupon he, the said receiver, did pay and deliver into this court the said United States bonds and moneys received from said Curtis and said Lynde, and also the said $7,417.13; where the same now remain with the clerk thereof, or on deposit by him, subject to the order of this honorable court.

The said receiver in his said report made no*t* mention of the taxes on said railroad for the year A. D. 1875, and did not in fact pay any portion thereof; which said report is as follows, viz:

"In the circuit court of the United States for the northern district of Illinois.

"THE UNION TRUST COMPANY OF NEW YORK, complainant, "*vs.* "THE ROCKFORD, ROCK ISLAND AND ST. LOUIS Railroad Company, and others, defendants.	In chancery.

"William H. Ferry, receiver in the above-entitled cause, re-
78 spectfully reports that the amount of money in his hands as receiver at the date of his last report was..... $23,488 84

"That since the date of his last report he has received, in settlement of business done upon the

road while the same was operated by him, as a receiver	$2,456 00	
"Of Mitchell & Lynde, amounts collected on stock subscriptions	736 09	
"Of Henry Curtis, jr., money in his hands as trustee	1,395 75	
" " C. Lynde, amount deposited in his hands as security	2,000 00	
"Making total of receipts		6,587 84
"Which, added to the sum on hand at date of last report, makes a total of		30,076 68
"That, since the date of his last report, he has made the following payments:		
"For freight-overcharges, live stock killed, legal and other services, and expenses attendant upon the business of said receivership	4,759 58	
"Compromising the claim of H. Markham, for personal injury, as per order of the court	400 00	
"Sundry old stock-claims arising before appointment of receiver, recording of deeds required to be recorded by said receiver, and other claims pertaining to business of the road	969 60	
"Paid A. G. Richardson and F. P. Corby & Co. for supplies	1,387 52	
	7,816 70	30,076 68
79 "Amounts brought forward	7,816 70	30,076 68
"Indianapolis & St. Louis R. R'd for trackage on freight from Alton	4,209 44	
"Sundry transportation balances	697 55	
"Sundry claims & judgments for building fences.	1,837 99	
"James S. Stearns & Henry J. Loudder as per order of this court	2,250 00	
"Making total payments since last report		16,811 68
"Balance on hand this date		13,265 00

"A detail statement of his receipts and payments, as such receiver, is herewith filed, marked "A," and made a part of this report. The vouchers for the payments, made by said receiver, are also filed and made a part of this report.

"The receiver farther reports that the injury received by Harrison Markham, which was compromised by him as aforesaid, was received Nov. 6, 1875, and should be paid by H. Osterberg, the purchaser, out of the earnings and revenues of said railroad, amounting to the sum of $6,490.22, paid to him by said receiver as earnings of the road, after Nov. 1, 1875, as follows:

"Amount paid Markham by order of the court	$400	
"Expenses in examining the case for witnesses, &c	60	$460 00

"Of the $1,066.65 uncollected freight ordered to be turned over to the purchaser by order of the court, reference to which is hereafter made, there has been paid to the receiver. $52 00

80 "Included in the above statement of receipts which he has retained on this account, leaving a balance due from Osterberg..... $408.00

"Of the payments which the court has ordered to be made by the receiver, there remains unpaid the claim of S. C. Magill, $271.70. A letter was sent to the attorney prosecuting this claim, notifying him of readiness to pay the same, to which no reply has been received.

"The claim of the Belleville Nail Company, $153.33. This amount was sent to the former agent of the company at St. Louis, who declined to receive it, stating that the amount now belonged to Westphal, Hinds & Co., of Dubuque. The money not having been received by the party named in the order of the court, the receiver is advised to bring it into court to decide such order as shall be made in the premises.

"The receiver farther reports that he has deposited with the clerk of this court the vouchers relating to the cases in which bonds had been given, secured by the trust to Henry Curtis, jr., and has received from said Curtis a deed for the lands specified in the order of the court, heretofore made in that behalf; that he has received in money from said Curtis thirteen hundred and ninety-five $\frac{25}{100}$ dollars, which is included in the above statement; that he has also received from said Curtis four thousand dollars, face value $\frac{5}{20}$-bonds of the United States. That he has collected interest on these in gold, $120.00, and sold the gold for a premium of 11½ per cent., making one hundred thirty-three $\frac{80}{100}$ dollars, which is not included in the above statement of account.

81 "He further reports that he has been advised and believes that the judgment of the circuit court in each of the cases of Abel Byam vs. The Rockford, Rock Island & St. Louis Railway Co., and of John Delany vs. same company have been reversed by the supreme court of the State of Illinois. That the liability of R. R. Cable and C. Lynde upon the appeal-bonds in these cases is wholly at an end, which liability was secured by said Curtis trust, and that no farther liability of said Cable and Lynde, or either of them, secured by said trust, now remains.

"The receiver further reports that he has executed & delivered to Heyman Osterberg, trustee, according to a declaration of trust filed by him in this cause, for all the lands and lots conveyed to said receiver by Henry Curtis, jr., as aforesaid. Also of the blocks purchased by the receiver at Beardstown, and for right of way across sec. 30, town. 1 north, range 1 east; also of the lands in Schuylkill County, State of Pennsylvania, conveyed to the said receiver in settlement of the Boody suit.

"Also all the property, real and personal, which came to his hands as receiver of the Rockford, Rock Island & St. Louis Railroad Company.

"The claims against the receiver of every kind, so far as known, are settled, except the following claim of J. Peterson, for colt killed, & colt & mare injured, Nov. 5, 1875, referred to in former report, settlement for which should be made from monies turned over to the purchaser of the road, collected on business after the 1st of Nov'r, A. D. 1875. A claim of forty dollars for board of H. Markham at

82 Beardstown, after he was injured, which should be paid out of the same fund. J. Breckenridge, at that time an officer of the road, gave his individual guaranty for the amount, in his humane anxiety to

have the injured man placed where he could receive proper attention. The receiver asks that the court will make the proper order for the payment of the same.

"There are also seven small claims for loss and overcharge amounting to fifty $\frac{15}{100}$ dollars. The connecting roads through which these claims were presented were requested to adjust them, but have failed to present the evidence that they have done so, and it seems but reasonable, after so long delay, farther consideration of them be omitted.

"In the matter of the uncollected freight above referred to, as being ten hundred sixty-six $\frac{65}{100}$ dollars, uncollected at the time of making the report, there had been a portion paid in to the station agents, but not separated and reported as such at the time of making the report; and some items had been written off on satisfactory evidence of errors in the charge; and also some other amounts had been paid in in the same manner between the time of making the report and the time of entering the order for turning over the uncollected freight to H. Osterberg. At the time this order was entered there was only $356.74 remaining uncollected, and of this sum fifty-two dollars was paid in to the receiver's a/c about the 21st of June, and retained by him, as stated above, on the Markham case. The receiver asks that the order for paying uncollected freights be amended in accordance with these facts.

83 In the above statement no compensation for said receiver or his solicitor for the month of July is charged, and the receiver asks that, in making his report hereon, the master be directed to report what sum should be paid as such compensation. After having discharged fully all the important duties of this trust, and carried into execution all the orders of the court relating thereto, the receiver respectfully asks that his accounts stated in this report, with the accompanying vouchers for the same, be referred to the master for final report, and that upon the coming in of said report an order may be entered fully and completely discharging him from all further duty, and from all liability of any kind as such receiver.

"WM. H. FERRY, *Receiver.*

"CHICAGO, *July* 25, 1876.

"(Endorsed:) Filed July 26, '76. W. H. Bradley, clk."

84 And your petitioner further shows that the said bonds and moneys received by him from the said Curtis and Lynde were received and held by them in trust for the said railroad company in the following manner:

Before the bill to foreclose was filed in this case, several judgments had been recovered against the Rockford, Rock Island and St. Louis Railroad Company, from which said company desired to appeal.

In order to do so, it was necessary to give bonds with security, and the said Lynde and Curtis & others, at their instance, became security upon such bonds. For the purpose of indemnifying them as such securities certain lands belonging to said company, and covered by said mortgages or deeds of trust foreclosed in this suit, were conveyed to said Curtis, and certain moneys the earnings of the road were deposited in the hands of said Curtis & Lynde.

This was before the commencement of the suit to foreclose. By the authority of the railroad company Curtis sold a part of said lands and converted a part of the moneys into Government bonds. And such of said lands as were not sold by Curtis were sold under the decree in this case by a specific description. The lands which had been sold by Curtis were not mentioned or described in said decree of sale or in said

advertisement of sale. The judgments referred to were reversed in the supreme court of the State of Illinois, or otherwise settled and disposed of, and the property thus held by the said Curtis and Lynde
85 was released, and they discharged from their trust, about the month of May, 1876, whereupon they paid and delivered to the receiver the bonds and money above mentioned, and said Curtis conveyed to him the unsold lands. All the land sold by Curtis was sold before the commencement of this suit, and the only money received by him after the commencement of this suit was received for rents and interest. The lands not sold by him, and which were afterwards sold by the master under the decree herein, were, after the settlement with Curtis and Lynde, conveyed by Curtis to the receiver herein, and afterwards, under the order of this court, were conveyed by him to said Osterberg, as the purchaser under the decree.

And your petitioner, upon the facts above stated, claims that he is justly entitled at law and in equity to the bonds and moneys received by the said William H. Ferry of said Curtis and said Lynde and by him paid into this court.

And your petitioner further shows that by the statutes of the State of Illinois all taxes are made a lien on the 1st day of May of each year for that year; that assessments are made between the 1st day of May and the 1st day of July in each year.

That the assessments are reviewed by the town and county boards, and reported to the State auditor for equalization on or before the 10th day of July. The State board of equalization meets on the 2nd Tuesday in August, and within the first ten days of December of each
86 year books and warrants for the collection of taxes are delivered to the collectors, and not before.

And your petitioner further shows that the taxes assessed upon said railroad, and franchises, and property for the year A. D. 1875, and which became a lien on the first day of May, 1875, and for which books and warrants of collection were issued in due form of law on or before the 10th day of December, 1875, amounted to the sum of $23,000 and upwards; and your petitioner claims that the said sum of $7,417.13 now in this court is legally and equitably applicable in payment of said taxes of the year 1875, as far as the same will liquidate the same.

And your petitioner therefore respectfully prays for an order or de-
$4000 coupon bonds. cree of this court directing the clerk to deliver to your petitioner, trustee, &c., the said United States bonds with the coupons annexed, and to pay to him the said sums of money received by the said William H. Ferry of the said Henry Curtis, jr., and Cornelius Lynde, and for the coupons of said bonds sold by him, amounting in the
$3,529.52. aggregate to the sum of $3,529.52; and, second, that the
$7,417.13. sum of seven thousand four hundred and seventeen dollars and thirteen cents of moneys paid into court by said Ferry be applied in payment of the taxes of the year A. D. 1875 against said railroad and property, or be paid to your petitioner, to be so applied by him, and for such other and further relief as may be agreeable to equity; and your petitioner will ever pray.

HEYMAN OSTERBERG,
By J. R. DOOLITTLE & SON,
Solicitors.

J. R. DOOLITTLE & SON,
Of Counsel.

(Endorsed:) Filed August 25, '76. Wm. H. Bradley, clk.

87 And on the same day, to wit, on the 25th day of August, A. D. 1876, in the record of the proceedings of said court in said entitled cause, before the honorable Thomas Drummond, judge, appears the following entry, to wit:

THE UNION TRUST COMPANY OF NEW YORK
vs.
THE ROCKFORD, ROCK ISLAND AND ST. LOUIS Railroad Company et al. } In chancery.

And now coming on to be heard the petition of Heyman Osterberg, that certain monies and Government bonds paid into court by the receiver herein, and which came from Cornelius Lynde and Henry Curtis, jr., be paid over to said Osterberg, as the purchaser of the road, and that the sum of seven thousand four hundred and seventeen dollars and thirteen cents ($7,417.13) also paid into the court by the receiver, and which came from the earnings of said road while operated by him, be applied in payment of the taxes upon said road for the year 1875, the trustee of the bondholders, and also Samuel M. Nickerson, as a bondholder, having filed answers to said petition, and the argument of counsel having been heard, the court adjudges that the said
88 money and bonds did not pass to the purchaser of the road, but belong in equity to the mortgage creditors of said railroad company as proceeds of land covered by the mortgage.

As to that portion of the petition of said Osterberg which prays that the money paid by the receiver into court and derived from the earnings of the road while operated by him be applied on the taxes of 1875, the court adjudges that the petitioner bought the road subject to the taxes of 1875, and that the earnings of the road while it was operated by the receiver should be applied for the benefit of the mortgage-creditors, to relieve the purchaser from the payment of the taxes of 1875.

The court doth therefore order that the said Government bonds be sold by the clerk, and the proceeds added to the funds in court for distribution among the mortgage-creditors, and that the petition of said Heyman Osterberg be overruled, and the costs thereof taxed against him.

And thereupon said petitioner prays an appeal from the judgment of this court to the Supreme Court of the United States, which is allowed on his entering into bond in the penal sum of five hundred dollars, according to law.

89 And afterwards, to wit, on the fourth day of September, A. D. 1876, said petitioner Heyman Osterberg, by his solicitors, filed in said clerk's office his bond in appeal in said entitled cause, which said bond is in the words and figures following, to wit:

Supreme Court of the United States.

THE UNION TRUST COMPANY OF NEW YORK
vs.
THE ROCKFORD, ROCK ISLAND AND ST. LOUIS Railroad Company and others, defendants.

Know all men by these presents that we, Heyman Osterberg, of Rock Island, in the State of Illinois, and Henry McKey, 77 Clark street, of the city of Chicago, in the State of Illinois, are held and firmly bound

unto the Union Trust Company, of New York, and Samuel M. Nickerson, as trustees and representatives for the mortgage-creditors of the Rockford, Rock Island and St. Louis Railroad Company, and to whomsoever it may concern, in the full and just sum of five hundred dollars, to be paid to the said Union Trust Company, of New York, and to the said Samuel M. Nickerson, trustee and representative for said mort-
90 gage-creditors, and whomsoever it may concern, their successors, executors, administrators, or assigns. To which payment well and truly to be made we bind ourselves and each of us jointly and severally and our and each of our heirs, executors, and administrators firmly by these presents. Sealed with our seals. Dated this 1st day of September, A. D. 1876.

Whereas the above-named Heyman Osterberg has taken an appeal to the Supreme Court of the United States to reverse the final decretal order entered and rendered in the above-entitled cause by the circuit court of the United States for the northern district of Illinois on the 25th day of August, A. D. 1876, upon a petition duly filed by him:

Now, therefore, the condition of this obligation is such that if the above-named Heyman Osterberg shall prosecute his said appeal to effect and answer all costs if he shall fail to make good his plea and his said appeal, then this obligation shall be void, otherwise to remain in full force and virtue.

HEYMAN OSTERBERG. [SEAL.]
HENRY McKEY. [SEAL.]

Sealed and delivered in presence of—
J. R. DOOLITTLE.

(Endorsed:) Filed.

91 NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States for said northern district of Illinois, do hereby certify the above and foregoing to be a true, correct, and complete transcript of the record of all the proceedings had in said court under the petition Heyman Osterberg, filed August 25, A. D. 1876, in the cause wherein The Union Trust Company of New York is the complainant, and The Rockford, Rock Island and St. Louis Railroad Company is the defendant, as the same appears from the files and records of said court now remaining in my custody and control.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office in Chicago, in said district, this 13th day of November, A. D. 1876, and of our Independence the 101st year.

[SEAL.] WM. H. BRADLEY, *Clerk.*

(Indorsement on cover:) No. 931. Heyman Osterberg, appellant, vs. The Union Trust Company of New York et al. N. Illinois C. C. U. S. Filed 17 November, 1876.

ADDITION TO RECORD.

No. 931.

HEYMAN OSTERBERG, APPELLANT,

vs.

THE UNION TRUST COMPANY OF NEW YORK ET AL.

STIPULATION OF COUNSEL AND ADDITION TO RECORD.—FILED DECEMBER 1, 1876.

1 In the circuit court of the United States for the northern district of Illinois, July term, 1876.

THE UNION TRUST CO. OF NEW YORK
vs.
THE ROCKFORD, ROCK ISLAND AND ST. LOUIS Railroad Company and others. } In equity.

The Union Trust Co. of New York, for answer to the petition of Heyman Osterberg filed herein, says that it admits the facts as stated in said petition to be true; but whether the said Osterberg, as the purchaser of the premises and property in said mortgages and said decree mentioned, is entitled to the bonds and money received from Henry Curtis, jr., and Cornelius Lynde, by W. H. Ferry, the receiver herein, and by him paid into court, and whether the sum of $7,417.13,
2 paid into court, of the net earnings of the said Rockford, Rock Island and St. Louis Railroad, while in the hands of the said Ferry as receiver, should be applied to the payment of the taxes of 1875, or whether said bonds should be sold, and the proceeds thereof, together with the said sums of money paid into court by the said receiver, should be added to the proceeds of the sale, and distributed in like manner to the holders of bonds of the said Rockford, Rock Island and St. Louis Railroad Company, are conclusions of law arising upon the facts stated in said petition, which it submits to the consideration and judgment of this honorable court.

LYMAN TRUMBULL,
Sol. for Complt.

(Endorsed:) Filed August 24, 1876. Wm. H. Bradley, clk.

3 Circuit court of United States, northern district of Illinois.

THE UNION TRUST COMPANY OF NEW YORK
vs.
THE ROCKFORD, ROCK ISLAND AND ST. LOUIS R. R. Co. et al.

The answer of Samuel M. Nickerson, in his own behalf and in behalf of certain other bondholders under the first mortgage issued by the Rockford, Rock Island and St. Louis R. R. Co., to the petition of Heyman Osterberg, filed herein.

This respondent admits the facts stated in said petition, but denies that such facts give to said petitioner any right to any portion of the monies or Government bonds now in the hands of the clerk of this court, and insists that said monies and Government bonds belong
4 to the holders of the bonds of said company, and that said monies and the proceeds of said Government bonds should be distributed among said creditors of said company.

And this respondent also insists that said road was sold subject to the taxes of 1875, and that it would be unjust and inequitable to require such taxes, or any portion of them, to be paid out of the funds or monies now in the hands of the clerk, and which in equity belong to the holders of the bonds of said road.

And this respondent, for himself and other bondholders, asks that the prayer of said petitioner be denied.

SAMUEL M. NICKERSON
And other bondholders,
5 By LAWRENCE, CAMPBELL AND LAWRENCE,
His Solicitors.

(Endorsed:) Filed August 24, 1876. Wm. H. Bradley, clerk.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States for the said northern district of Illinois, do hereby certify the above and foregoing to be true, correct, and complete copies of the answer of the Union Trust Company of New York to the petition of Heyman Osterberg, filed August 24, 1876, and of the answer of Samuel M. Nickerson to the petition of said Heyman Osterberg, and filed August 24, 1876, in the cause wherein The Union Trust Company of New
6 York is the complainant and The Rockford, Rock Island and St. Louis Railroad Company et al. are the defendants, as the same appear from the originals thereof respectively, now remaining in my custody and control.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at my office in Chicago, in said district, this 28th day of November, A. D. 1876, and of our Independence the 101st year.

[SEAL.] WM. H. BRADLEY, *Clerk.*

In the Supreme Court of the United States.

HEYMAN OSTERBERG, APPELLANT,
vs.
UNION TRUST COMPANY OF NEW YORK ET AL., appellees. No. 931.

7 It is hereby stipulated that the above and within certified

copies of answers omitted by the clerk of the circuit court of the northern district of Illinois in the transcript of the record, by mistake, be filed nunc pro tunc, and taken and printed as a part thereof; such answers to be read as if inserted after the petition at the bottom of page 37 in the record as printed.

Chicago, Nov. 28, 1876.

J. R. DOOLITTLE & SON,
Sol. & Counsel for Petitioner.
LAWRENCE, CAMPBELL & LAWRENCE,
Counsel for Nickerson & other Creditors.
LYMAN TRUMBULL,
Solicitor for Union Trust Company.

(Endorsed:) Sup. Court U. S. 1876, October term. No. 931. Heyman Osterberg, appt., vs. The Union Trust Company of New York et al. Stipulation of counsel and addition to record. Filed 1st December, 1876.

IN THE

Supreme Court of the United States.

No. 931.

HEYMAN OSTERBERG, Appellant,

—vs.—

THE UNION TRUST COMPANY of NEW YORK et al., Appellees.

BRIEF AND POINTS SUBMITTED BY

J. R. DOOLITTLE & SON,

of Counsel for Appellant.

CHICAGO:
BEACH, BARNARD & CO., LEGAL PRINTERS, 98 RANDOLPH STREET.
1876.

IN THE

Supreme Court of the United States.

No. 931.

HEYMAN OSTERBERG, Appellant,

—vs.—

THE UNION TRUST COMPANY of NEW YORK et al., Appellees.

BRIEF AND POINTS.

This case comes here on appeal from a final decretal order, denying the prayer of the petition of the appellant, in a supplementary proceeding after a final decree in a suit in equity.

The original suit was brought by the Union Trust Company of New York, as Trustee for the bondholders, against the Rockford, Rock Island and St. Louis Railroad Company and others, in the court below, to foreclose two certain mortgages, or deeds of trust, executed by said railroad company to secure certain bonds in the sum of nine million dollars.

The bill was filed on the 11th day of June, A. D. 1874.

the 29th of October, 1874, Wm. H. Ferry, Esq., was duly appointed Receiver of the property, franchises and rights of said railroad company, and was ordered to operate the railroad under the direction of the Court.

On the 9th day of November, A. D. 1874, the railroad

company executed its deed, conveying to him all its property, and surrendered possession.

On the 13th day of July, A. D. 1875, a final decree was entered, providing, among other things, for a sale by the master of the mortgaged property.

On the 16th day of August, 1875, the Master sold the property of the railroad company, and Heyman Osterberg, the petitioner in the court below, and the appellant here, became the purchaser; but possession was not delivered to him until the 9th day of November, 1875—the Receiver having been in possession one year.

On the 26th day of July, 1876, the Receiver made his final report, and paid into court, four United States 5-20 bonds, of the par value of $1,000 each, with $133.80 interest collected upon them in currency; also $1,395.72 in lawful money; which bonds and money he had received from Henry Curtis Jr.; and also $2,000 received by him of Cornelius Lynde, all being the property of said railroad company; and also the sum of $7,417.13, a balance received by him from the earnings of the said railroad while in his possession as Receiver from November 9th, 1874, to November 1st, 1875.

On the 25th day of August, A. D. 1876, the appellant filed his petition in the court below, in which he prayed:

First. That the moneys and bonds received from Curtis and from Lynde be delivered to him, as a part of his purchase at the sale.

And *Second.* That the said sum of $7,417.13 be applied in part payment of the taxes of the year A. D. 1875 upon the property of said railroad company, which became a lien and charge upon said railroad and property on the 1st day of May, 1875; and for such further and other relief as would be agreeable to equity.

The appellees thereupon filed their several answers, admitting all the facts as set out in the petition, which was

drawn by agreement of counsel in its present form, in order to present the whole case to the court upon the petition.

The Court, upon hearing counsel, entered a final decretal order wholly denying the prayer of the petition.

From such order this appeal is brought.

Assignment of Errors.

First. The Court erred in denying the prayer of the petition, asking that four certain bonds of the United States, of one thousand dollars each, with the coupons annexed, and thirty-five hundred twenty-nine and $\frac{52}{100}$ dollars in money, which were received by the Clerk of the Court from the Receiver, should be turned over to the petitioner as his property.

Second. The Court erred in decreeing that said bonds and moneys belong in equity to the mortgage creditors of the Rockford, Rock Island and St. Louis Railroad Company, and not to the petitioner.

Third. The Court erred in denying the prayer of the petition, asking that seventy-four hundred seventeen and $\frac{13}{100}$ dollars ($7,417.13) in money, received by the Receiver from the earnings of said railroad while in his possession, and by him paid to the Clerk of the Court, should be applied to the payment of the taxes for the year 1875, or some part thereof.

Fourth. The Court erred in decreeing that the sum of $7,417.13, received by the Receiver from the earnings of said railroad while in his possession, should be applied for the benefit of the mortgage creditors of said railroad, and should not be applied to the payment of the taxes imposed thereon for the year 1875, or any part thereof.

The appellant submits that such decretal order should be reversed on two grounds:

First. Because the bonds and moneys received from

Curtis and Lynde belong in equity to the appellant, as a part of his purchase at the Master's sale.

Second. Because the sum of $7,417,13 received by the Receiver from the gross earnings of the railroad, is legally and equitably applicable towards the payment of taxes for the year 1875, or some part thereof.

Both of these grounds of error rest upon facts, and depend upon questions of fact and of construction. Therefore, in the discussion of each, a brief statement of facts rather than an argument is submitted.

I.

Let us inquire :

First. Did the bonds and moneys received from Curtis and Lynde pass to the appellant by the sale ?

By looking into the petition, we find the facts to be :

That before the suit to foreclose was brought, certain lands were conveyed by the railroad company to Henry Curtis, Jr., to indemnify him from loss by reason of his having become security in certain appeals taken by the company to the courts of Illinois, and for the same purpose certain moneys, the earnings of the road, were deposited in the hands of said Curtis and Lynde. (Record 84 and 85, pp. 36 and 37.) By authority of the railroad company, Curtis sold a part of said lands, and converted a part of the moneys into the government bonds in question.

After the foreclosure suit was commenced, Curtis sold no more of the lands, and received no more money, except from rents and interest, but he retained the title to the lands and the possession of the bonds and moneys during the pendency of the suit. Wm. H. Ferry, the Receiver, did not take the legal title to the unsold lands, nor did he have possession of the bonds or money until May, 1876, nine months after the foreclosure sale, and six months after the possession of the railroad had been given to the

appellant under his purchase. During all this time, Curtis held the legal title to the unsold lands, and Curtis and Lynde the possession of the bonds and money, in trust for the railroad company, and for the purpose of indemnity; the equitable interest in the lands, bonds and money continuing in the railroad company, or its assigns. When the Master sold under the decree of foreclosure, the unsold lands remaining in the name of Curtis were also sold at the sale by a specific description, with other property.

The bonds and money in the hands of Curtis and Lynde were not specifically described in the decree, nor in the Master's deed to the appellant, but he contends that they were covered and embraced by the order appointing the Receiver, by the deed to the Receiver, by his deed to the appellant, by the final decree of foreclosure, and by the Master's notice of sale, and by his deed, under a general description, and that they were in fact purchased by the appellant at the sale.

The order of the Court appointing the Receiver, required the railroad company to convey to him "all the "property, real and personal, wheresoever found, and all "contracts for the purchase of lands, and all other equit- "able interests, things in action, and other effects which "belonged to, or were held in trust for said defendant "railroad company, or in which it had any beneficial "interest." (Record 4, p. 2.)

By this order the railroad company was required to transfer to the Receiver its equitable or beneficial interest in the lands held by Curtis, and in the money and bonds held by Curtis and Lynde.

The deed subsequently executed by the company in pursuance of the above order, transfers to the Receiver "all and every the estate, real and personal, chattels real, "moneys, outstanding debts, *things in action, equitable in-* "*terests*, property and effects whatsoever and whereso- "ever, of or belonging or due to, *or held in trust for*

"*the said railroad company, or in which it had any* "*interest, right or title, at the time of filing the bill of com-* "*plaint.*" (Record 8, p. 3.)

By this deed the railroad company transferred to the Receiver its equitable or beneficial interest in the lands, money and bonds held in trust by Curtis and Lynde.

The decree directing the sale of the property of the railroad, and which truly recites the property described in the trust deeds, among other things, ordered the sale of " all rights, claims and benefits in and to all leases, con- " tracts and agreements made with any parties owning " any coal lands or mineral lands, or railroad or railroads, " *or with any other parties for any other property*, together " with all and singular the tenements and appurtenances " thereto belonging, and the reversions, remainders, tolls, " incomes, rents, issues and profits thereof; *and also all* " *the estates, rights, titles and interests whatsoever, as well at* " *law as in equity, of the said Rockford, Rock Island and* " *St. Louis Railroad Company of, in and to the same;*" " and all other property, real and personal, belonging to " said Rockford, Rock Island and St. Louis Railroad " Company," " and which is now in possession of said re- " ceiver, and hereinafter described or referred to; *and all* " *other property, rights, franchises, and things which shall* " *have been acquired by purchase or otherwise by the said* " *Receiver*, during the pendency of this suit for use in con- " nection with said railroads, and shall be at the time of " the sale hereby decreed in his possession, *or to which he* " *may then be entitled.*" (Record 16, p. 7.)

It is claimed by the appellant that under this decree the Master was ordered to sell the entire property of the Rockford, Rock Island and St. Louis Railroad Company, to which the Receiver was entitled under his deed—which, of necessity, must include the equitable or beneficial interest of the railroad in and to the property held in trust by Curtis and Lynde.

The words of the decree are broad enough to cover this equitable interest. They are so comprehensive that it would require express words of exception in order to exclude such equitable interest from its operation. No exception is contained in the decree. No exception of any interest whatever is made, and it is manifest from the terms of the decree that none was intended; but that on the contrary, it was the purpose of the decree to sell together at one sale all the property, real and personal, and all the franchises, rights and interests, at law or in equity, of the Rockford, Rock Island and St. Louis Railroad Company.

It may be objected by respondents that the bonds and money held by Curtis and Lynde were not specifically described in the decree, in the enumeration of property to be sold, and for this reason, did not pass by the sale. But the answer to this objection is manifest. The enumeration of property in the list, beginning on page 26 of the Record, and ending on page 31, does not purport to be a list of all the property and rights to be sold at the sale, but only so much thereof as had been reduced to the *actual possession* of the Receiver.

If the purchaser were limited in his purchase to the property and rights enumerated in that list, he would have bought the railroad, but without the franchises, for the list nowhere specifies the franchises as subject to sale.

Again, the list in question describes a large amount of real estate, but it nowhere specifies the accrued rents and profits thereof as a portion of the estate to be sold. It enumerates various contracts with other railroads, but does not specify the right to demand whatever might be due from said railroads under the respective contracts. The list in question is only a portion of the decree, and standing alone it would be an imperfect statement of the property and rights actually ordered sold. It must be

construed in connection with the other parts of the decree, in order to be consistent with its provisions.

The property in the hands of Curtis and Lynde was not in fact in the "actual possession" of the Receiver at the time of the entry of the decree and the sale, and therefore would not be included in a list of property in his "actual possession." The Receiver held merely an equitable interest, subject to the trust ; and the possession was in Curtis and Lynde.

It is true that the unsold lands, held in trust by Curtis, were enumerated in the list, which was incongruous in a list purporting to represent property in the actual possession of the Receiver. But it was in no way objectionable, although wholly unnecessary under the provisions of the decree, for the purpose of passing the title of the Receiver to the same. His equitable interest would have passed at the sale equally well under the other provisions of the decree. And the fact of the listing of these unsold lands, held in trust, under an improper head, cannot prevent other equitable interests from passing to the purchaser under other provisions of the decree.

In the Master's notice of sale, under the decree, the property and rights to be sold are not particularly described, (Record 34, p. 15), but reference is made to the decree itself for a more particular description. The language of the notice itself is broad enough to cover the bonds and money in question. Its words are : "all other "property, real and personal" of the railroad company in the possession of the Receiver, or to which "he may then "be entitled," to be sold "together as one property, and "not in separate parcels."

The appellant having become the purchaser of all the property, real and personal, of said company, as one property, and the sale having been duly confirmed by the Court, the Master on the 18th day of May, 1876, executed and delivered his deed to the appellant.

That deed, in the broadest language possible, conveyed to the appellant the entire railroad, with all its branches, property and franchises, and all its rights, claims and benefits in all contracts and agreements, with any party, for any property, including the reversions, remainders, tolls, incomes, rents, issues, and profits, and "all the "estates, rights, titles, and interests whatsoever, as well at "law as in equity" of said railroad company. (Record, 61 and 62; pp. 26 and 27.)

The order of the Court confirming the Master's sale decreed that the said railroad company and all persons claiming under said company, and all persons claiming liens subsequent to the said mortgages be forever foreclosed of and from all equity of redemption, and claim in or to the mortgaged premises, rights, franchises and property, and every part and parcel thereof, contained in said mortgages. (Record 55, p. 24.)

The decree of July 13, 1875, ordering the sale, provided that the sale shall be absolute, and not subject to any redemption. "And that *from and after* such sale and the "conveyance thereupon executed, the said Rockford, "Rock Island and St. Louis Railroad Company, and all "and every person claiming by, through or under it, sub-"sequently to the filing of the original bill of complaint "herein, be and they are hereby forever barred and fore-"closed of and from all and every interest, estate, right, "claim or equity of redemption of, in or to said property, "rights, privileges or franchises so sold, and every part "and parcel thereof." (Record 25, p. 11.)

It is evident from the above provision that the equity of redemption was cut off by the sale, and not otherwise, and that until the sale, it continued to exist. And when the Court, in confirming the sale, decreed the absolute foreclosure of the equity of redemption in all the mortgaged premises, franchises and rights, it did so upon the ground

that everything embraced in the mortgages had been sold by the Master and purchased by Osterberg.

The lands which were transferred by the road to Curtis as security were covered by the mortgages. (Record 84, p. 36.)

A portion of them he sold and converted into government bonds, the bonds in question.

It is true that the portion of the lands which Curtis sold was not sold by the Master under the decree, and for the reason that the bonds stood in place of the lands sold, and subject in equity to the lien of the mortgages.

By the same order of Court confirming the Master's sale, the Receiver was ordered to execute and deliver to Heyman Osterberg, the purchaser, a deed. And in pursuance of such order, the Receiver, on the 22d day of May, 1876, executed a deed to Osterberg conveying, among other property, "all the property, real and personal, "wherever found, and all contracts for the purchase of lands, "*and all other equitable interests, things in action*, and other "effects which belonged to said railroad company, *or were* "*held in trust for said company, or in which said company* "*had any beneficial interest*, and which came to the hands "or possession of said William H. Ferry, as Receiver of "said Rockford, Rock Island and St. Louis Railroad "Company, *or the title of which has become vested in said* "*Ferry, as such Receiver, by any surrender, transfer or con-* "*veyance from any person or corporation whatsoever.*" (Record 74, p. 32).

Thus, in brief words the appellant calls the attention of the court to what seems to be conclusive, upon the face of the record, to show that the bonds and money held by Curtis and Lynde passed to him as a purchaser at the sale.

II.

WE COME NOW TO THE SECOND GROUND FOR REVERSING THE ORDER OF THE COURT BELOW.

That involves the question whether, legally or equitably the sum of $7,417.13, paid into court by the Receiver out of the earnings of the railroad while in his possession should be applied to pay any portion of the taxes of 1875.

To answer that question, let us refer to some other facts shown by the record.

The Receiver entered into possession of the railroad, the 9th day of November, 1874, and retained possession and received the earnings for about one year, of which the money in question is a part.

By the laws of Illinois, the taxes for the year are made a lien on the first day of May in that year, although the amount is not assessed and equalized until August, and warrants for collection are not issued until December. (Record 86, p. 37.)

The taxes of 1875, amounting to $23,000 and upwards, became a lien while the Receiver was in possession. It was in force when the decree of sale was entered July 13, 1875, and also when the sale took place on the 16th day of August, 1875. At the time of the sale, the master publicly declared: "I am ordered by the court to say "that from the proceeds of the sale will be retained a "sum sufficient to provide for the taxes of 1873 and 1874," nothing being said by him as to the taxes of 1875. (Record 32, p. 14.)

While it is not denied by the appellant, that upon such a purchase if he had received immediate possession, he would have taken the property subject to the taxes of 1875, yet, when we look into the decree and take into account the true terms of the purchase, it will be seen that the possession of the railroad and its earnings were to be retained by the Receiver; and, that until the purchaser should take possession, the net earnings and income of

said railroad were to be paid over by him, and added to the proceeds of sale. (Record 24, p. 11.)

By the seventh clause of the decree, the net earnings and income are made equivalent to the possession of the road. As long as the appellant remained out of possession, he lost the net earnings and income.

As long as the possession was retained by the Receiver the net earnings and income were added to the purchase price, for the benefit of creditors.

The question is, and, all turns upon that, what is net earnings or income of a railroad company? Are not accruing taxes a portion of the necessary expenses of holding and operating a railroad? In any just sense of the term, can we speak of the net earnings and income of a house, a farm, a store, a factory, a railroad, until after legal taxes are paid? Until taxes are paid, are we certain of any net earnings or income from any property?

From the date of the decree, July 13, 1875, to the first of November, the appellant did not have the net earnings and income of the railroad. During that time the Receiver for the creditors did. Is it just that the creditors should have not only the net earnings and income, but an amount besides, equal to the taxes upon that property in the meantime? That was no part of the bargain.

Of course we do not deny that, after taking possession, the appellant should bear his share of that tax of $23,000. But until he did, the creditors, before taking net earnings and income, should pay their share of the taxes.

The Receiver held possession for them from July 13th, to November, about four months, or one-third of the year 1875. One-third of $23,000 is $7,666, a sum sufficient to cover the amount in controversy.

Therefore the appellant respectfully submits that upon the second ground also such decretal order should be reversed.

J. R. DOOLITTLE & SON,

Of Counsel for Appellant.

IN THE

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1876

No. 931.

HYMAN OSTERBERG

—*vs.*—

THE UNION TRUST COMPANY OF NEW YORK et al.

ARGUMENT FOR SAMUEL M. NICKERSON AND OTHER BONDHOLDERS.

By Lawrence, Campbell & Lawrence.

CHICAGO:
BEACH, BARNARD & CO., LEGAL PRINTERS, 98 RANDOLPH STREET.
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POINTS BY APPELLEE.

I.

The purchaser of a railroad under a decree of foreclosure and sale, takes it subject to existing taxes, and can not claim to have its earnings between the day of sale and the date of his payment of the purchase money, and receiving possession of the road, applied to the payment of taxes.

Holmes v. *Sharer*, 78 Ills., 578.
Bishop v. *O'Connor*, 69 Ills, 434.
Bassett v. *Lockard*, 60 Ills., 164.
The Monte Allegro, 9 Wheat., 616.

II.

Money that comes into the hands of the receiver subsequent to the sale, from former earnings of the road, or from property not directed by the decree to be sold, and not sold in fact, can not be claimed by the purchaser of the road as against the creditors.

ARGUMENT.

I.

On the 16th of August, 1875, the Rockford, Rock Island and St. Louis Railroad, in the State of Illinois, was sold under a decree of foreclosure rendered by the Circuit Court of the United States for the Northern District of Illinois. The road had been, for a considerable period prior to the sale, in the hands of a receiver. He made his final report July 26, 1876, about nine months after the sale. This report showed in his hands four United States bonds of $1,000 each, and ten thousand eight hundred and twelve dollars and eighty-five cents in cash. The bonds and $3,395.72 of the money had been paid to the receiver by Henry Curtis and Cornelius Lynde, under circumstances hereinafter to be stated. The residue of the cash, amounting to $7,417.13, had come into the receiver's hands from the earnings of the road. Upon the filing of this report, an order was made directing the payment of the money and bonds into court, where a considerable sum from the proceeds of the sale was still on

deposit, awaiting a final order of distribution among the creditors.

Upon the filing of the report, the appellant, Hyman Osterberg, who had purchased the road at the master's sale, filed a petition in the cause asking the court to order the application towards the payment of the taxes upon the road for the year 1875, of the $7,417.13 received from earnings, and to order the payment to Osterberg, as the purchaser of the road, of the money and United States bonds that came from Curtis and Lynde.

The court refused to make either order, but held that the money and the proceeds of the bonds should be distributed, with the other funds in court, among the creditors. From this decree Osterberg has taken the present appeal.

We represent a portion of the creditors, and file this argument in their behalf, asking an affirmance of the order of the Circuit Court.

Having made this statement of the two questions presented, it is necessary, in order to their proper comprehension, that we should present the facts disclosed by the record, upon which the decision of the court was made. They are set out in the petition and exhibits filed therewith, it having been agreed between counsel in the court below, that all the facts bearing upon the case, either in favor of the petitioner or the creditors, should be embodied in the petition, and that the case should be submitted upon the petition thus framed.

The Rockford, Rock Island and St. Louis Railroad, a road nearly three hundred miles in length,

was subject to two mortgages, issued to secure bonds amounting to nine millions of dollars, without the coupons. In 1874, the Union Trust Company of New York, the trustee in the mortgages, filed a bill to foreclose in the Circuit Court of the United States for the Northern District of Illinois. On the 13th of July, 1875, a decree was rendered finding the amount due the bondholders to be $11,251,-535.90 in gold, and directing a sale of the road. On the 16th of August, 1875, the road was sold by the master for one million three hundred and twenty thousand dollars to Hyman Osterberg, the present appellant. The sum of $200,000 only was paid at the sale. On the 3d of November, 1875, the court made another order directing that Osterberg be let into possession of the road on the payment of an additional sum of three hundred and fifty thousand dollars in money, and four million two hundred thousand of the bonds and coupons. By the terms of the order, Osterberg was to have the earnings of the road, and to pay its expenses after the first of November, 1875, but the court retained the deed as security for the unpaid balance of the purchase money.

Under this order, Osterberg took possession on the 9th of November, 1875. Another order was made on the 28th of January, 1876, extending the payment of the residue of the purchase money to April 1, 1876. It was then paid, and on the 17th of May, 1876, another order was made confirming the sale, and directing the master to execute a deed to the purchaser, which was done.

The first question we propose to discuss is the correctness of the order of the Circuit Court in refusing to apply towards payment of the taxes of 1875 the $7,417.13, which came into the hands of the receiver from the earnings of the road.

It is claimed in behalf of Osterberg, the petitioner, that the taxes for the year 1875 became, under the statute of Illinois, a lien on the road on the 1st of May of that year, and was therefore a lien on the 16th of August, 1875, when the road was sold by the master.

We admit this to be the statutory rule, but claim that it in no wise affects the present question.

The law in regard to judicial sales in Illinois is what it is wherever the common law prevails — namely, that in the absence of fraud, the purchaser buys at his own peril in regard to all outstanding titles or liens. In the very last volume of the Illinois Reports, in the case of *Holmes* v. *Sharer*, 78 Ills., 578, the court use this language:

"What does it matter in a court of equity, or in "a court of law, if the title of a purchaser at a judicial "sale, as this was, should fail? Can equity relieve "in the absence of all fraud, in such a case? The "maxim there, as at law, is, *caveat emptor*. The "buyer must look out for himself. The books are "full of cases where this maxim has always been "applied, and in this court especially. Among the "latest are *Bassett* v. *Lockard*, 60 Ill., 164, and "*Bishop* v. *O'Conner*, 69 ib., 431. The rule gov- "erning a purchase at a judicial sale is, that there

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" is no warranty, and the validity of the title must " be at the purchaser's own risk."

In *Bishop* v. *O' Conner*, 69 Ills., 434, the court says:

" It is the policy of the law to only invest a sheriff, " master in chancery, or administrator, in making " sales of real estate, with a mere naked power " to sell such title as the debtor or deceased had, " without warranty, or on any terms except those " imposed by law. They are the mere instru- " ments of the law, to pass such, and only such title " as was held by the debtor or intestate."

In *Bassett* v. *Lockard*, 60 Ills., 164, the defendant was seeking to escape the payment of a promissory note, on the ground that it was given for real estate bought at a master's sale, and that he had lost the property under a prior lien. The court held the defense invalid. The same rule was applied in *McManus* v. *Keith*, 49 Ills., 389, and in *England* v. *Clark*, 4 Scam., 490.

It would seem hardly proper to cite authorities to this Court upon a principle so familiar, but for the fact that the claim of the petitioner is made in defiance of this rule, and we cite these Illinois cases for the purpose of showing that the law in Illinois upon this subject conforms to the general rule as laid down by this Court in the case of The Monte Allegro, 9 Wheat., 616.

If there can be any doubt as to the correctness of the ruling of the Circuit Court in regard to the application of this money to the taxes of 1875, such doubt must be wholly removed when we consider the special circumstances attending this judicial sale.

It is disclosed by the petition that at the time of the sale, which took place on the 16th of August, 1875, the master, on the authority of the court, made the following statement:

"I am ordered by the court to say that from the "proceeds of sale will be retained a sum sufficient "to provide for the taxes of 1873 and 1874." (See printed record, page 14.) Nothing was said as to the taxes of 1875. Neither the taxes of 1873, 1874, nor 1875, had been paid. But for this announcement by the master, the purchaser would have taken the property subject to all the unpaid taxes. In view of this rule of law, the court directed the master to announce, at the sale, that the taxes for 1873 and 1874 would be paid out of the purchase money. The master does so, but is silent as to the taxes of 1875. With what grace can the purchaser now come forward and claim exemption from the taxes of 1875? Even if the law had not imposed the burden of paying them upon the purchaser, the terms of the sale, as announced by the master, would have done so by the clearest implication.

It may be claimed that the fact of the receiver's remaining in possession of the road from August 16th, 1875, the day of sale, until November 9th, 1875, when he took possession, creates some imaginary equity in favor of petitioner's claim. The purchaser could have had immediate possession of the road by payment of the purchase money, but as an indulgence to him, the time of payment was extended without iuterest, and on the 3d of November, two months and eighteen days after the sale, the

court made an order authorizing him to have possession, at any time, upon the payment of considerably less than the entire purchase money. Under this order, on the 9th of November, the purchaser received the possession.

All this was a favor to the purchaser. He was not entitled, as a matter of right, to the possession of the road, until the payment of the entire purchase money, $1,320,000; and he was not entitled, as a matter of right, to a credit for any portion of this sum. In view, however, of the largeness of the sum, the court gave some indulgence, and finally gave him the possession without full payment, withholding the master's deed as security for the residue. The purchaser can predicate no claim upon the fact that he did not receive possession of the road until two months and twenty-four days after the sale, when this delay was owing solely to his own *laches* in he payment of the purchase money.

It is further to be remarked that there is no evidence that the road earned anything above its operating expenses during the time between the day of sale and the 9th of November, when possession was delivered.

It is also to be remarked that the unpaid purchase money, amounting to a million and one hundred thousand dollars, drew no interest between the day of sale and the day when possession of the road was delivered to the purchaser. Interest was never charged on any portion of the purchase money until the 28th of January, 1876, when the order was made extending the payment of the unpaid balance

to April 1st, 1876, and directing that this balance should draw interest.

But this question was definitely settled by the decree of sale.

The 5th section of the decree, (page 8 of printed record,) provided that the master, after paying the expenses of sale, and retaining in his hands such sum as the Court might direct for the protection of intervening claimants, should pay the balance to the clerk, to be applied by him, under the direction of the Court, in payment of the bonds and coupons.

The 7th section of the decree, (page 11 of printed record,) is as follows:

"That William H. Ferry, the receiver herein, "shall account for and pay over to the said master, "and that he be and he is hereby authorized to re- "ceive from him, the net earnings and income of "said railroad from this date up to the day of sale, "and until any purchaser at said sale shall take pos- "session, and any amount so accounted for and paid "over to said master shall be added to the proceeds "of sale, and applied in the same manner as herein- "before directed."

We submit that this section settles conclusively the question of applying to the payment of taxes the money paid into court by the receiver. The money came from the earnings of the road while in the hands of the receiver, and this decree, under which the purchaser claims, provides in terms that the net earnings from the date of the decree until the purchaser takes possession, shall be added to the pro-

ceeds of sale and applied in payment of the bonds and coupons.

This question was also settled by the orders of court, made November 3, 1875, and November 16th, 1875.

The order of Nov. 3d (page 16 of printed record) gave the possession of the road to the purchaser upon his making a further payment upon the purchase money, and provided that he should "receive the earnings and income, and pay the operating, and other expenses thereof, after the first day of November, A. D. 1875, until the further order of the court."

The order also contained the following clause directing the receiver to pay from the funds in his hands the expenses incurred by him in operating the road, and to bring the surplus into court:

"It is further ordered, that William H. Ferry, the receiver herein, from the funds in his hands, pay off and discharge all claims by him incurred for operating, or other expenses, while in possession of said railroad, or heretofore by this Court authorized by him to be paid, so far as the means in his hands will enable him to pay the same, and if any surplus remain in his hands, as receiver, after such payments, to pay the same over to the Master as directed by the decree heretofore entered in this cause on the thirteenth day of July, A. D. 1875, and that he present his final account of his actings and doings as receiver herein, with all reasonable dispatch."

Prior to November 16th, the receiver made a re-

port, showing his surrender of the road, and on that day the court entered an order (page 17 of printed record,) discharging him from all custody and control of said road, and from all responsibility in relation thereto, unless exceptions should be filed in ten days. This part of the order was as follows:

"And it further appearing from said report, that "the said receiver had surrendered the line of the "Rockford, Rock Island and St. Louis Railroad, with "its equipments and property appurtenant thereto, "in accordance with the order of this court, entered "November first, A. D. 1875, it is ordered, that the "acts of said receiver, in making such surrender, be "approved, and said receiver be wholly discharged "from all care, custody, and control of said railroad, "equipment and property, and from responsibility "in relation thereto, unless exceptions thereto be "filed within ten days from the entry of this order."

It is not claimed that any exceptions were filed.

It is too plain for controversy, that the decree of sale, and these subsequent orders of the court, all required the earnings of the road, in excess of operating expenses, while in the hands of the receiver, to be paid into court for the benefit of the creditors, who, at best, could receive but a small per cent. of the money due them, and that the purchaser under the order of November 3d, should have the earnings and "pay the operating, and other expenses," from the first of November. The receiver was not authorized by that order to pay the taxes of 1875, but only to pay "all claims by him incurred for operating "or other expenses while in possession of said rail-

" road." His report of the 16th of November showed what he did pay, and by the order of that day it was approved, and he was to be discharged from all " responsibility " in relation to said road, unless exceptions were filed in ten days ; and none were filed.

When these orders were made the time had not arrived when the taxes for 1875 could be paid. While under the law of Illinois taxes become a lien on land on the first of May of each year, they are not collectible until December. The State Board of Equalization meets in August. The taxes are levied by the county authorities in September, and it is admitted in the petition (page 37 of printed record) that " within the first ten days of December, of " each year, books and warrants for the collection of " taxes are delivered to the collectors, *and not before.*" The road passed out of the hands of the receiver on the 9th of November, before the taxes could have been paid by him, and he was then discharged from all further duties in regard to the road. By the very terms of the order under which the petitioner took the road, he was to have the earnings and "pay " the operating, and other expenses," after the first of November, 1875, and these taxes were not payable, and could not be paid, until after that time.

We wish to make one more observation in regard to the taxes. It is evident that the purchaser at the time when he bought the road, considered himself liable for the taxes, and the present attempt to take this money from the creditors, for his use, is purely an afterthought. This is evident, from the fact, that

he never claimed that the amount of the taxes for 1875 should be deducted from his last payment, made April 1st, 1876, or that any portion of the money then paid should be appropriated to the taxes. The taxes of 1875 amount to $23,000, and if the petitioner is entitled to have the money which the road had earned, while in the hands of the receiver, applied towards their payment, he must also be entitled to have so much of the proceeds of the sale, now in court, as may be necessary to complete the payment, applied in the same way. There is no ground for giving him money for this purpose, from one fund, which would not equally apply to the other.

II.

We now come to the other question presented by the petition, namely, the claim of the petitioner to the four United States bonds, and the three thousand three hundred and ninety-five dollars in money which came to the receiver from Henry Curtis and Cornelius Lynde.

The bonds and money came into the receiver's hands in the following manner: Some time before the bill to foreclose was filed in the present case Lynde and Curtis had become securities for the railroad company upon several appeal bonds given by it in the course of litigation, and the company had conveyed to them certain lands as an indemnity against loss. A part of these lands had been sold, and the money and bonds in question were chiefly

the proceeds of these sales, the bonds having been bought by them as an investment of the trust money. *The sales had been made and the money and bonds had been received by Lynde and Curtis before the bill to foreclose the mortgages in the present case was filed.* (See page 37 of printed record.) So much of the money as did not come from the sale of lands was either derived from their rent, or was paid directly by the railroad company to Lynde and Curtis, to hold as an indemnity, and came from the earnings of the road.

The petitioner, Osterberg, is now claiming that when he bought the railroad he also bought this money and these bonds.

This claim seems to us extraordinary.

It cannot be denied that the earnings of the road prior to the sale, after the payment of the operating expenses, should have been applied by the company in payment of the interest on its bonds, secured by the mortgages that have been foreclosed. It cannot be denied that the bondholders had a stronger equitable claim upon the net earnings of the road than any other persons could have. The money in the hands of Curtis and Lynde, so far as it came from the earnings of the road, clearly belonged, in equity, to the bondholders, as soon as it was relieved from the trust upon which Curtis and Lynde held it.

The same is true as to the money derived from the lands, whether purchase money or rent. It belonged in equity to the creditors of the company.

It appears by the record, (page 36 of printed record, 10th line from bottom,) that these lands

were covered by the mortgage. This is really immaterial, so far as concerns the present question. Even if they had not been included in the mortgage, yet, having been sold by the company, and their proceeds being in court in the form of money, the court would of course distribute the money among the creditors of this bankrupt and expiring corporation. But as these lands were in the mortgage, it is difficult to see how even a shadow of equity can be found by this petitioner to support his claim to the purchase money.

It is admitted in the petition, (page 36 of printed record, bottom line,) that the lands from which this money came were not mentioned in the decree of sale, or in the advertisement. They were not, in fact, sold by the master. A considerable quantity of land, independently of the railroad bed, was sold by him, but each tract was specifically described in the decree, and in the advertisement of sale. But the lands which had been sold by Lynde and Curtis, and the purchase money of which formed a part of this fund, were purposely left out of the decree. They had been sold to innocent purchasers, and the purchase money was in the hands of Lynde and Curtis, subject to the order of the court. Under these circumstances, neither court nor counsel desired to disturb the title of the purchasers by including these lands in the decree of sale.

They were content to ratify the private sales of the company, and accept the purchase money for the bondholders, in lieu of the lands.

Now, in this state of facts, what possible pretence

can there be for the claim set up to this money by the purchaser at the sale? The money was not mentioned in the decree. It was not sold at the sale. To have sold money would have been an absurdity. How did the purchaser acquire any right to it? He bought only the property which the decree directed to be sold, and all of which was specifically enumerated in the decree. This money and these government bonds were not mentioned in the decree, nor by the master at the sale. The record shows that the master at the sale read the advertisement as showing what property was to be sold, and that the advertisement described the property merely as described in the decree. No person bidding at that sale could have supposed he was bidding, not only for the property described in the decree and offered by the master, but also for certain moneys and government bonds not mentioned in the decree and not offered at the sale.

The lands belonged in equity to the bondholders until the bonds were paid. Their proceeds equally belonged in equity to the bondholders. The money was in the hands of the court, and the court so applied it. We do not see what other disposition of it could have been made, without doing gross wrong to the creditors, who, at the best, could receive but a small fraction of the debt due to them from this corporation. Why should this money be taken from them and given, as a gratuity, to the purchaser at the sale?

We have been speaking of this fund, so far as it was derived from the sale or lease of land belonging

to the railroad company. So far as it was derived from the former earnings of the road, as it in part was, the claim of the petitioner seems, if possible, still more unreasonable. Those earnings should have been applied as rapidly as they accumulated, beyond the cost of operating the road, to the payment of the interest upon these bonds. The money has finally come into the hands of the court, and it has thus applied it. No other application of it could have properly been made.

Since writing the foregoing, we have been furnished with a copy of the brief prepared by the learned counsel for the petitioner. It is claimed by them that the deed executed by the railroad company to the receiver, under the order of court, was sufficiently broad in its terms to cover the cash in the hands of Curtis and Lynde, and that this was also covered by the decree of sale.

It is immaterial how broad may have been the terms of the deed to the receiver. The question is, did the decree order the sale of this money? The only clause in the decree which can be even claimed as broad enough to cover this money is the following general clause (page 7 of printed record):

"And all other property, real and personal, "belonging to said Rockford, Rock Island and St. "Louis Railroad Company, and Orion and Miners- "ville Railroad Company, or either of them, *and* "*which is now in the possession of said receiver, and* "*hereinafter described or referred to*, and all other "property, rights, franchises and things *which shall* "*have been acquired by purchase or otherwise by the*

" *said receiver*, during the pendency of this suit, for " use in connection with said railroads, and shall be, " at the time of the sale hereby decreed, in his pos- " session, or to which he may then be entitled."

It will be observed that the first of the above clauses relates in terms to property then in the possession of said receiver, and afterwards described or referred to in the decree. This money was not then in the possession of the receiver, and did not come into his possession until long after the sale, nor was it described or referred to in the subsequent portion of the decree.

The second of the above clauses relates in terms to property which had been acquired by purchase or otherwise by the receiver, during the pendency of the suit, for use in connection with said railroad. The receiver had not acquired this money at all, and when it did subsequently come to his hands, it was not for use in connection with said railroad, which had long before passed out of his possession.

Turning to the 10th section of the decree (page 11 of printed record) we find this clause:

" The property hereinbefore directed to be sold, " which has been reduced to, and is now in the " actual possession of the receiver, consists of the " following."

Then follows a description in detail of all the property to be sold. This description makes no mention of this money, or of the lands from which it was derived.

The learned counsel for appellant, on page 9 of their argument, quote the language of the deed from

the receiver to Osterberg, made on the 22nd of May, 1876, as being broad enough to cover this money and the U. S. bonds. Possibly it may, but the order directing him to make the deed only authorized him to make one which should convey "all the right, title "and interest by him acquired as such receiver, in "or to the above mentioned and described property, "or any part thereof," that is, the property previously described in the decree, and sold by the master at the sale. (Page 24 of printed record.) The receiver's deed, as made, was never approved by the court, and if it was broad enough in its terms to cover property not included in the sale by the master, it was made without authority, and, to that extent, was void.

As to the taxes, the learned counsel for the petitioner place their argument chiefly on the ground of some supposed equity accruing to the purchaser in consequence of his not receiving possession of the road immediately after the sale. We have already commented on this, and have shown that this was owing to his own *laches*. He was really treated with great indulgence by the court. He could have had possession at any time by payment of his purchase money. During the time that elapsed between the sale and the date of his taking possession, he had paid but $200,000 out of $1,320,000, the entire purchase money, and the sum unpaid was drawing no interest. The court and the creditors would have been but too happy to deliver to him the road if he would pay the purchase money. It is difficult to see how an equitable claim that this money

should be applied on the taxes can arise from this state of facts.

We respectfully submit that the order of the Circuit Court denying the prayer of the petition should be affirmed.

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C. B. LAWRENCE,

Of Counsel.